In Equity, No. 420.

In the District Court of the United States, District of Utah.

UNITED STATES OF AMERICA, PETITIONER,

v.

SOUTHERN PACIFIC COMPANY, CENTRAL PACIFIC RAILWAY COMPANY ET AL., DEFENDANTS.

RECORD—VOLUME 6.

DEFENDANTS' EXHIBITS.

Pages 1990 to 2325, inclusive.

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745 DEFENDANTS' EXHIBIT No. 50 (PART A), APRIL 16, 1915.

No. 993—In Equity. In the Circuit Court of the United States for the District of Utah.

The United States of America, complainant, v. the Union Pacific Railroad Company; the Oregon Short Line Railroad Company; the Oregon Railroad & Navigation Company; the San Pedro, Los Angeles & Salt Lake Railroad Company; the Atchison, Topeka & Santa Fe Railway Company; the Southern Pacific Company; Northern Pacific Railway Company; Great Northern Railway Company; Farmers' Loan & Trust Company; Edward H. Harriman, Jacob H. Schiff, Otto H. Kahn, James Stillman, Henry H. Rogers, Henry C. Frick, and William A. Clark, defendants. Volume XII.—Pleadings.

746–748 No. 993. In the Circuit Court of the United States for the District of Utah.

The United States of American, complainant, v. the Union Pacific Railroad Company and others, defendants.

Original petition. (Filed February 1, 1908.)

749 United States Circuit Court, District of Utah.

The United States of America, complainant, v. The Union Pacific Railroad Company, The Oregon Short Line Railroad Company, The Oregon Railroad & Navigation Company, The San Pedro, Los Angeles & Salt Lake Railroad Company, The Atchison, Topeka & Santa Fe Railway Company, The Southern Pacific Company, Northern Pacific Railway Company, Great Northern Railway Company, Farmers' Loan & Trust Company, Edward H. Harriman, Jacob H. Schiff, Otto H. Kahn, James Stillman, Henry H. Rogers, Henry C. Frick, and William A. Clark, defendants. In equity.

Petition.

To the judges of the Circuit Court of the United States for the District of Utah.

Now comes the United States of America, by Hiram E. Booth, the United States attorney for the district of Utah, acting under
750 direction of the Attorney General of the United States, and brings this its proceeding by way of petition against the Union Pacific Railroad Company, a corporation organized and existing under the laws of the State of Utah;

The Oregon Short Line Railroad Company, a corporation organized and existing under the laws of the State of Utah;

The Oregon Railroad & Navigation Company, a corporation organized and existing under the laws of the State of Oregon;

The San Pedro, Los Angeles & Salt Lake Railroad Company, a corporation organized and existing under the laws of the State of Utah;

The Atchison, Topeka & Santa Fe Railway Company, a corporation organized and existing under the laws of the State of Kansas;

The Southern Pacific Company, a corporation organized and existing under the laws of the State of Kentucky;

The Northern Pacific Railway Company, a corporation organized and existing under the laws of the State of Wisconsin;

The Great Northern Railway Company, a corporation organized and existing under the laws of the State of Minnesota;

The Farmers' Loan & Trust Company, a corporation organized and existing under the laws of the State of New York;

751 Edward H. Harriman, Jacob H. Schiff, Otto H. Kahn, James Stillman, Henry H. Rogers, citizens of the State of New York and residents of New York City;

Henry C. Frick, a citizen of the State of Pennsylvania and resident at Pittsburg, in said State; and

William A. Clark, a citizen of the State of Montana and resident at Butte, in said State, and complains and says:

I. The defendants Union Pacific Railroad Company, Oregon Short Line Railroad Company, Oregon Railroad & Navigation Company, San Pedro, Los Angeles & Salt Lake Railroad Company, Atchison, Topeka & Santa Fe Railway Company, Southern Pacific Company, Northern Pacific Railway Company, and Great Northern Railway Company were, at the times hereinafter mentioned, and now are, common carriers employed in the transportation of freight and passengers among the several States of the United States and between such States and foreign nations, and as such carriers so employed were and are engaged in trade and commerce among the several States and with foreign nations.

II. That from and after January 1, 1901, the defendants Edward H. Harriman, Jacob H. Schiff, Otto H. Kahn, and James

752 Stillman, with certain other persons who have joined with them from time to time, including the defendants Henry H. Rogers and Henry C. Frick, have owned or controlled a majority of the capital stock of the defendant Union Pacific Railroad Company;

That during all of said time the said defendant Edward H. Harriman has been, and still is, the chairman of the executive committee of the board of directors of said company, and since October,

1903, he has likewise been, and still is, the president of said corporation;

That the said Jacob H. Schiff, Otto H. Kahn, and James Stillman were, from a time prior to said January 1, 1901, and until the year 1906, directors of said corporation;

That said James Stillman has continued to be a director thereof, and that during all of said period and until the year 1906 the said Otto H. Kahn and said Stillman were members of the said executive committee of said corporation, and said Stillman is still a member thereof;

That during all of said time the said Jacob H. Schiff and Otto H. Kahn were, and still are, members of a banking firm of the city of New York, doing business under the firm name and style of
753 Kuhn, Loeb & Co., which said banking house is, and during all the times above stated has been, the fiscal agent of said Union Pacific Railroad Company, through which agent substantially all the purchases and sales of stocks and bonds hereinafter mentioned have been made;

That said defendant Henry H. Rogers has been a director of said corporation since the year 1902, and that said defendant Henry C. Frick has been a director of said corporation since the year 1904, and both said parties are still members of said board of directors;

That during all the times above mentioned, by by-laws of said company to that end enacted, the directors of said corporation have delegated their power to manage and direct the business and affairs of the said company to an executive committee of five members to act in such manner as such committee should deem best for the company's interest in all cases in which specific directions shall not have been given by the board; and it is and has been also provided by said by-laws that the chairman of said executive committee is authorized to represent that committee when it is not in session;

That pursuant to such by-laws the said defendant Harriman has, with the concurrence and assistance of said individual defend-
754 ants, other than defendant Clark, who were members of the executive committee or directors of said company, dominated the affairs and controlled the management of said defendant Union Pacific Railroad Company.

III. The defendant Union Pacific Railroad Company is, and during all of said times has been, the owner of lines of railway extending from Council Bluffs, Iowa, to Ogden, Utah; from Julesburg, a point on said line, to Denver, Colo.; from Denver to Cheyenne, Wyo.; and a line from Kansas City, Mo., to Denver;

That the predecessor of the said Union Pacific Railroad Company was organized under the act of Congress approved July 2, 1862 (12 Stat., 489). Its charter was thereafter amended by the acts of July

2, 1864 (13 Stat., 356), February 24, 1871 (16 Stat., 430), and other acts. It constructed a line of railway from a point in Council Bluffs, Iowa, through Cheyenne, Wyo., to Ogden, Utah, with a branch from Julesburg to Denver, Colo.;

That the Kansas Pacific Railway Company was previously incorporated by special act of Congress as the Leavenworth, Pawnee & Western Railroad Company (subsequently the Union Pacific
735 Railroad Company, eastern division), and constructed a line of railway from Kansas City, Mo., to Denver;

That the Denver Pacific Railway & Telegraph Company was incorporated under the laws of Colorado, and constructed the line of railroad from Denver to Cheyenne;

That these railways were consolidated under the said act of Congress of 1862 into the Union Pacific Railway Company;

That the Central Pacific Railroad Company was organized under the laws of California, and constructed a line of railroad from Sacramento, Cal., to Ogden, Utah;

That the Western Pacific Railroad Company was organized also under the laws of California, and constructed a line of railroad from San Francisco to Sacramento, Cal., and that these two latter corporations were afterwards consolidated into and became the Central Pacific Railroad Company, which was for many years engaged in the operation of said line of railroad from San Francisco to Ogden, at which point it connected with the main line of said Union Pacific Railroad Company;

That these lines of railroad were constructed by Government aid, consisting of land grants of 10 sections per mile of road, and Government bonds secured by a second mortgage upon the rail-
736 ways in the sum of $16,000 per mile in open country, $48,000 per mile for 300 miles of the railroad most mountainous and difficult of construction, and $32,000 per mile for the balance of the mountainous railroad;

That by the act of Congress approved July 2, 1864, the said lines of railway receiving said aid, to wit, the Central Pacific Railroad Company, the Western Pacific Railroad Company, the Union Pacific Railway Company, the Kansas Pacific Railway Company, and the Denver Pacific Railway & Telegraph Company, constituting all of the said lines from Council Bluffs and from Kansas City, through Denver, Cheyenne, Ogden, and Sacramento, to San Francisco, were required to operate their lines as one continuous line, without discrimination against or in favor of any or either of said companies;

That in and by section 15 of said act of Congress approved July 2, 1864, it was, among other things, provided "That the several companies authorized to construct the aforesaid roads are hereby required to operate and use said roads and telegraph for all pur-

poses of communication, travel, and transportation, so far as the public and the Government are concerned, as one continuous line, and in such operation and use to afford and secure to each equal ad-

vantages and facilities as to rates, time, and transportation,
757 without any discrimination of any kind in favor of the road or business of any or either of said companies or adverse to the road or business of any or either of the others";

That by the act of Congress approved June 20, 1874 (18 Stat., 111), this provision was in substance reenacted, and any officer or agent of the companies refusing to operate and use the said railroads for all purposes of communication, travel, and transportation, so far as the public and the Government are concerned, as one continuous line, without discrimination as aforesaid, was declared to be guilty of a misdemeanor, punishable by fine and imprisonment; and any party injured was authorized to sue for damages or to procure an injunction to enforce its provisions;

That the Oregon Short Line Railroad Company is, and during all of said times has been, the owner of a line of railway extending from a junction with said main line of the Union Pacific at Granger, Wyo., to Huntington, Oreg.; also a line from Salt Lake City, Utah, to Butte, Mont.;

That the defendant Oregon Railroad & Navigation Company is, and during all of said times has been, the owner of a line of railroad

from said Huntington, Oreg., to Portland, Oreg.;
758 That all three of said lines of railway are the owners of important branch lines in various States; that substantially all the stock of said Oregon Short Line Railroad Company is, and during all said times has been, owned by said Union Pacific Railroad Company, and that substantially all the stock of said Oregon Railroad & Navigation Company is, and during all of said times has been, owned by said Oregon Short Line Railroad Company and said Union Pacific Railroad Company, and that by means of such stock ownership said Union Pacific Railroad Company has at all times controlled and managed the said Oregon Short Line Railroad Company and said Oregon Railroad & Navigation Company, and the lines of said three corporations have composed and still compose through main lines of track from Council Bluffs, Iowa, and Kansas City, Mo., upon the Missouri River, to said city of Portland, Oreg.;

That in the year 1901 said Oregon Railroad & Navigation Company was the owner of a line of steamships plying between said Portland, Oreg., and San Francisco, Cal., by way of the Willamette and Columbia Rivers and the Pacific Ocean; and through the ownership of the stock of a corporation to which said steamship line has been conveyed still owns the same; and also was and still is the owner of the stock of a corporation known as the Portland & Asiatic Steamship

759 Company, which was running and still runs a line of steamships from said Portland to Japan, China, and other points of the Orient, and the said lines of steamships constitute, with said railway lines, through routes for the transportation of property and persons both among the several States and with foreign nations;

That the Southern Pacific Company was on said January 1, 1901, and still is the owner and in control by and through its ownership of the stock of various connecting lines of a line of railway extending from New Orleans, in the State of Louisiana, through said State and the State of Texas, the Territories of New Mexico and Arizona, and the States of California and Oregon, to said Portland;

That said Southern Pacific Company also owned and still owns a line connecting with said through lines ending at Galveston, Tex., upon the Gulf of Mexico, and in connection with its lines of railroad so reaching New Orleans and Galveston it owned and operated and still owns and operates a line of steamships running from said ports to Habana, Cuba, and to the city of New York;

That then and now the said Southern Pacific Company was and is also the owner of all the capital stock of the Central 760 Pacific Railroad Company, a corporation organized and existing under the laws of California, which succeeded to the ownership of the line of railway from Ogden to San Francisco theretofore owned by the corporation of the same name, to wit, Central Pacific Railroad Company, hereinbefore particularly described; and by virtue of such ownership of all said capital stock said Southern Pacific Company then and now in all respects controls the operation and management of the affairs and business of said Central Pacific Railroad Company;

And was and still is also the owner of a majority of the stock of the Pacific Mail Steamship Company, which latter company operates a line of steamships from San Francisco to the Hawaiian and Philippine Islands, China, Japan, and other oriental ports, and also a line of steamers from San Francisco to Panama, which, with the lines of the Panama Railroad Company crossing the Isthmus, and ships running in connection therewith, constitutes a through line from New York to San Francisco;

That the said rail lines of the said Southern Pacific Company from the Mississippi River to Portland, Oreg., by way of San Francisco and Los Angeles, were in active competition with said lines of 761 railroad of the Union Pacific Railroad Company for the transportation of vast quantities of freight from points in the Mississippi Valley and in the Eastern States, both to and from the Pacific coast and points in Colorado and other interior States; and said steamship line of said Southern Pacific Company from New York to New Orleans and Galveston, together with its rail lines run

in connection therewith, was in active competition with the lines
said Union Pacific Railroad Company for a large amount of traf
originating in the Atlantic coast and Central States;

That the rail line of said Southern Pacific Company from S
Francisco to Portland was in active competition with the ships plyi
between San Francisco and Portland and owned by said Oreg
Railroad & Navigation Company, as hereinbefore alleged;

That the said ships of the Portland and Asiatic Steamship Co
pany, in connection with the rail lines of said Union Pacific Railro
Company and its subsidiary companies, as hereinbefore alleged, ru
ning from Portland, Oreg., to the East, were in active competiti
with the ships of said Pacific Mail Steamship Company and the ra
of said Southern Pacific Company running to the East from S
Francisco;

That the line of railroad composed of the tracks of sa
762 Oregon Short Line Railroad Company and said Oregon Ra
road & Navigation Company between Ogden, Utah, and Por
land, Oreg., were in active competition with the lines of said Sout
ern Pacific Company between said points;

*That the rail lines of the said Southern Pacific Company were
active competition with the ships and rail lines of the said Oreg
Railroad & Navigation Company for a large amount of traffic betwe
San Francisco and points in Montana, Idaho, and other States.*[1]

That the competition hereinbefore alleged between the system
railroads and steamships owned and controlled by said Union Paci
Railroad Company and the system of railroads and steamships own
and controlled by said Southern Pacific Company was substanti
and included a large volume of traffic, both freight and passenger;

That the Atchison, Topeka & Santa Fe Railway Company has be
for a period of more than eight years last past the owner and in co
trol, by direct ownership and by the ownership of the stock
763 railway companies owning a portion of said lines and by lea
of a line of railway reaching from Chicago, in the State
Illinois, through the States of Illinois, Missouri, Kansas, Colorad
the Territories of New Mexico, Arizona, and the State of Californi
to the city of San Francisco and to tidewater at San Diego, Cal
that said line of railway touches the Union Pacific at Kansas Cit
Mo., and is and during all said times has been competitive with sa
Union Pacific Railroad Company and said Southern Pacific Co
pany for a large traffic to and from the Pacific coast and the Orie
to and from various points in the East and the Mississippi Valley
and in the State of Colorado and other interior States;

[1] Italicized paragraph inserted by amendment under order of court, with the provi
that the said allegation should be considered denied by all of the defendants with
amendment to the several answers.

That the tracks of said Atchison, Topeka & Santa Fe Railway Company cross the continent between those of the Southern Pacific Company and the Union Pacific Railroad Company, and until the construction of the San Pedro, Los Angeles & Salt Lake Railroad, hereinafter referred to, constituted the only outlet to the East by rail from all the territory along the Pacific coast south of Portland, Oreg., to the Mexican border, other than the lines of said Union Pacific Railway Company and said Southern Pacific Company.

That the said Atchison, Topeka & Santa Fe Railway Com-
764 pany was for a number of years engaged in operating a line of steamships to oriental ports from said port of San Diego, Cal., and said line of ships, with its rail connections by way of the tracks of said Atchison, Topeka & Santa Fe Railway Company, was in active competition with the steamship and rail lines of said Union Pacific Railroad Company and the Southern Pacific Company hereinbefore described;

That the traffic that was so competitive between said Southern Pacific and Union Pacific and said Atchison, Topeka & Santa Fe was and is of great volume, both passenger and freight;

That the Northern Pacific Railway Company and the Great Northern Railway Company are each the owners of lines of railway extending from ports upon Lake Superior in the States of Wisconsin and Minnesota, and from the city of St. Paul, in the State of Minnesota, through and across the States of Minnesota, North Dakota, Montana, Idaho, Washington, and Oregon, and said railroad corporations are the joint owners of substantially all the stock and are in control of the Chicago, Burlington & Quincy Railroad Company, a corporation which is the owner of a vast system of rail lines connecting with
765 the lines of the Northern Pacific Railway Company at Billings, Mont., and at St. Paul, and with the lines of the Great Northern Railway Company at St. Paul, running thence to the cities of Chicago, St. Louis, Mo., Kansas City, Denver, and Omaha, Nebr., and crossing portions of the States of Minnesota, South Dakota, Iowa, Illinois, Wisconsin, Missouri, Nebraska, Kansas, Colorado, and Wyoming, and the lines of said Northern Pacific Railway Company and said Chicago, Burlington & Quincy Railroad Company are and have, by the Supreme Court of the United States, been held to be competitive with the lines of the said Union Pacific Railroad Company for a large amount of traffic, both passenger and freight.

That as to an extensive traffic between various points in the Eastern and Central States and the Pacific coast and the Orient the said Northern Pacific and Great Northern Railway Companies, together with their connections and the steamship lines controlled by them,

are and at all times have been competitors for business with s
Union Pacific Railroad Company and its connections so owned by
That the said San Pedro, Los Angeles & Salt Lake Railroad Co
pany is the owner of a line of railroad extending from San Ped
a port on the Pacific Ocean in the State of California, thro
766 by way of Los Angeles through the States of Californi
Nevada, and Utah to the city of Salt Lake in said State
Utah.

That a large part of said line is controlled by said corporation
direct ownership and a small portion thereof in southern Californ
by lease, but the same constitutes a continuous line between s
points, and the same would have been but for the suppression of co
petition hereinafter alleged at all times since its construction
reason of its location and its connection with said Oregon Short Li
Railroad Company at Salt Lake City and its connection with t
lines of the Denver & Rio Grande Railway Company at the sa
place, which latter company owns a line of railway from Salt La
City to Denver, a competitor with said Southern Pacific Compa
and said Union Pacific Railroad Company.

IV. That in the spring of 1901 the said defendants Edward H
Harriman, Jacob H. Schiff, Otto H. Kahn, James Stillman, and t
defendant Union Pacific Railroad Company, contriving and inten
ing unlawfully to restrain the trade and commerce among the seve
States and between said States and foreign countries carried on
said Union Pacific Railroad Company, said Southern Paci
767 Company and said other competing lines of railway and
ships as hereinbefore alleged and contriving and intendi
unlawfully to monopolize and attempt to monopolize such trade a
commerce, and contriving and intending unlawfully to restrain a
prevent competition among said railway systems and steamship li
in respect to such interstate and foreign trade and commerce, a
contriving and intending unlawfully to deprive the public of the b
cilities and advantages in the carrying on of such interstate a
foreign trade and commerce theretofore enjoyed through the ind
pendent competition of said railway systems and steamship lin
unlawfully entered into a combination or conspiracy to effec
virtual or substantial consolidation of said Union Pacific Railro
Company and said other transcontinental railway companies and a
steamship lines, and to place restraint upon all competitive int
state and foreign trade and commerce carried on by them and
monopolize and attempt to monopolize the same and to suppress
competition theretofore existing between the same in said interst
and foreign trade and commerce through their instrumentality a
by the means following, to wit:

That said firm of Kuhn, Loeb & Co., acting through said defendants Schiff and Kahn, and with the assistance of said
768 defendant Harriman, acquired 750,000 shares of the stock of said Southern Pacific Company, of the par value of $75,000,000, out of a total issue then outstanding of $197,847,788, which said stock was acquired for the purpose of turning the same over to said Union Pacific Railroad Company, so that the same might be held in the treasury of said company and voted by it, for the purpose and with the intention of controlling the election of the board of directors and officers of the said Southern Pacific Company and eliminating the competition that had theretofore existed between said Union Pacific system and said Southern Pacific system;

That said stock was, on or about March 4, 1901, duly delivered to said Union Pacific Company, pursuant to said conspiracy, and said company either by itself or by its subsidiary company, the Oregon Short Line Railroad Company, has since been in possession and ownership thereof, and has voted the said shares of stock at all the stockholders' meetings of said Southern Pacific Company;

That thereafter, with the like purpose of suppressing competition and placing restraint upon all competitive interstate and foreign trade and commerce, and monopolizing and attempting to
769 monopolize the same, and for the purpose of rendering more certain and secure the efforts theretofore made, as above stated, by the acquisition of the said 750,000 shares of said stock, said conspirators further acquired for, and said Union Pacific Railroad Company obtained, an additional 150,000 shares of stock of said Southern Pacific Company, which were likewise placed in the treasury of said company, making an aggregate of 900,000 shares of stock of said Southern Pacific Company so acquired for the purpose and in the manner above stated;

That all of the said stock has since been voted by said Union Pacific Railroad Company, or under its direction, at all meetings of stockholders of said Southern Pacific Company, with the end and for the purpose of restraining trade and commerce and eliminating competition and monopolizing and attempting to monopolize such interstate and foreign commerce, as hereinbefore averred;

That thereafter the said defendants Harriman, Schiff, Kahn, and Stillman and said Union Pacific Railroad Company caused to be issued by said Southern Pacific Company $39,563,300 par value of preferred capital stock of said Southern Pacific Company, which was subscribed for by the various stockholders of said South-
770 ern Pacific Company in proportion to their holdings of common stock;

That said Union Pacific Railroad Company, for the purpose above stated, and with intent to insure the success of said attempt to

restrain interstate and foreign commerce and monopolize the same subscribed for, took, and now has in its possession the proportion or percentage of such preferred stock to which the said 900,000 shares of common stock was entitled under said plan, to wit, $18,000,000 par value thereof, and has since its said issue at all times voted the same at all meetings of said Southern Pacific Company;

That the said 750,000 shares of Southern Pacific common stock was, in the first instance, acquired directly by said Union Pacific Railroad Company, but for convenience in financing, or other reasons unknown to complainant, the said stock was in form turned over to the said defendant Oregon Short Line Railroad Company, and the said additional common stock and the said eighteen millions of preferred stock are now in form in the treasury of said Oregon Short Line Railroad Company, but, as hereinbefore averred, are controlled and voted as directed by said Union Pacific Railroad Company

771 which owns the stock of said Oregon Short Line Railroad Company, and controls the management, operation, and business affairs thereof, and the said stock and all of the same is now in form so voted by said Oregon Short Line Railroad Company but at the dictation and instance of said Union Pacific Railroad Company, the said Harriman, Stillman, Schiff, and Kahn, for the purpose of choosing boards of directors who will act in subservience to the management of said Union Pacific Railroad Company, to the end that competition in interstate and foreign commerce may be restrained and such business be monopolized and attempted to be monopolized, as hereinbefore set forth;

That the balance of the stock of said Southern Pacific Company is scattered among a large number of stockholders, the exact number being unknown to complainant, but that by reason of the fact that such stock is so scattered in small blocks the full amount of such stock is not and never has been at any meeting, and, according to ordinary business usage and experience, never will be, voted at any such meeting, for which reason the said stock so controlled by said Union Pacific Railroad Company has constituted a majority of the stock present at each and every meeting of the stockholders of said

Southern Pacific Company since the year 1902, and will con-

772 tinue to constitute such majority if said stock remains the property of said Oregon Short Line Railroad Company, and the said Union Pacific Railroad Company, by and through said Oregon Short Line Railroad Company, has controlled the said meetings and has elected such boards of directors as have been selected by said railroad company and said Harriman, Stillman, Kahn, and Schiff;

That said conspirators, after the acquisition of such control of said Southern Pacific Company, at all times caused to be elected such

essive boards of directors of said company, a majority of whom were lso directors of said Union Pacific Railroad Company; that said Harriman was made the chairman of the executive committee of said outhern Pacific Company and still fills such office;

That said Southern Pacific Company has conferred upon such xecutive committee and upon the chairman thereof the same powers s the like committee and the like officer enjoy in the case of the nion Pacific Railroad Company as hereinbefore set forth; that the id Harriman was by said conspirators caused to be elected and he ill is the president of said Southern Pacific Company;

That the said Union Pacific Railroad Company and Southern
73 Pacific Company have and for several years last past have had common traffic officials, operating officials, purchasing agents, nd commercial agents, and in all respects the said lines of railway ontrolled by said corporations, respectively, as hereinbefore set forth, re operated and have since the year 1901 been operated as one single ntire system;

That the management of the said steamship lines has been amal-amated and that the competition formerly existing between the said wo railway systems, with their steamships, as hereinbefore set forth, as been destroyed, and the said interstate and foreign commerce hich was originally and prior to the acts herein complained of the ubject of competition has been monopolized in the hands and under he control of the said Union Pacific Railroad Company and its sub-idiary corporations and its officials;

That each and every of the acts hereinbefore complained of ere done and performed by the said Harriman, Schiff, Kahn, Still-an, and Union Pacific Railroad Company for the purpose and with he intent and result of monopolizing trade and commerce both mong the States and with foreign nations and with the intent and esult of suppressing and eliminating all competition between said companies.

74 V. Complainant further avers that, pursuant to the said conspiracy so formed to restrain trade and commerce among he several States and with foreign nations and of monopolizing and ttempting to monopolize the same, and to suppress the competition heretofore existing between the various railway systems and water ines hereinbefore described, and for the purpose of further effectu-ting such restraint and creating such monopoly, the said defendants, Harriman, Schiff, Kahn, Stillman, the Union Pacific Railroad Com-any, and other parties to complainant unknown, did, in the spring f 1901, also cause the said Union Pacific Railroad Company to equire a majority of the stock of said Northern Pacific Railway ompany, meaning and intending thereby to destroy the competition

theretofore existing between said Northern Pacific Railway syst
and said Union Pacific Railroad system and also between the lat
and the lines of the Chicago, Burlington & Quincy Railway Compa
hereinbefore described;

That the said purchase of stock was made in form by said Oreg
Short Line Railroad Company, but said company acted at the in
stance of said Union Pacific Railroad Company and said oth
775 parties, and the money employed in said purchase was fu
nished by the said Union Pacific Railroad Company, and sa
purchase was made solely for the purpose of suppressing compe
tion, restraining trade, and creating monopoly pursuant to the co
spiracy hereinbefore alleged;

That after the acquisition of said stock of the said Northern Paci
Railway Company there was formed under the laws of the State
New Jersey a corporation called the Northern Securities Compa
which latter corporation was organized for the purpose, among oth
things, of taking over as a holding company a majority or all t
stock of said Northern Pacific Railway Company and said Gre
Northern Railway Company;

That, acting in unison and harmony with the parties promoti
said Northern Securities Company, the defendants, Harriman, Schi
Kahn, Stillman, and the Union Pacific Railroad Company, and the
associates, caused said Oregon Short Line Railroad Company to s
to said Northern Securities Company all of the stock in said Nort
ern Pacific Railway Company so acquired, amounting to $37,023,0
par value of the common stock and $41,085,000 par value of the p
ferred stock out of a total issue of $155,000,000 par value, a
776 said Oregon Short Line Railroad Company received from s
Northern Securities Company for said stock so transferred
it, in addition to a certain amount of cash, shares of said North
Securities Company aggregating $82,491,871 par value, which s
shares were issued in the name of the defendant Harriman and
Winslow S. Pierce, who was the counsel for the said Union Pac
Railroad Company, who, however, had no personal interest in t
said shares, but held the same for the benefit and on account of t
said Oregon Short Line Railroad Company and pursuant to the co
spiracy above averred;

That the said preferred stock of the Northern Pacific Rail
Company was, pursuant to the charter and terms upon which s
stock was issued, duly retired and an additional issue of comm
stock in the same amount was made, so that the par value of the st
of said Northern Pacific Railway Company remained at $155,000,0
but the same was all in one class, to wit, common stock;

That thereafter an action was duly brought by the complain
United States of America, against the said Northern Securities C

any and others in the United States circuit court for the district of Minnesota, in which said cause a decree was duly entered, adjudging that the said holding of the stocks of the Northern Pacific Railway Company and the Great Northern Railway Company was illegal, as in restraint of trade and in violation of the act of Congress approved July 2, 1890, entitled, "An act to protect trade and commerce against unlawful restraints and monopolies," which said decree was affirmed by the Supreme Court of the United States (193 U. S., 197);

That thereafter the board of directors of said Northern Securities Company adopted resolutions for the distribution of the shares of the capital stock of the Northern Pacific Railway Company and of the Great Northern Railway Company among the shareholders of it, the said Northern Securities Company, pro rata, but that the said defendants and their associates who had so caused the shares of said Northern Pacific Railway Company to be acquired for the purposes above stated, opposed and protested against the said proposed distribution among the shareholders of said Northern Securities Company, and the said defendants, Harriman and Oregon Short Line Railroad Company, and the said Winslow S. Pierce, in whose name jointly with said Harriman the said shares had been registered, together with the Equitable Trust Company, a corporation of New York, with whom said shares had been deposited as trustee to secure obligations of said Oregon Short Line Railroad Company, exhibited a bill of complaint against said Northern Securities Company in the circuit court of the United States for the district of New Jersey, praying for an injunction to restrain the said pro rata distribution and a decree that they were entitled to the return and transfer to them by said Northern Securities Company of the shares of common stock of said Northern Pacific Railway Company, which were so delivered to said securities company by said Harriman and Pierce, and the shares of common stock into which the preferred stock of the Northern Pacific Railway Company delivered by them were converted in exchange for the certificates of stock of the Northern Securities Company so issued to and held by the complainants in such suit;

That in said action a decree was entered by the said circuit court granting the injunction prayed (132 Fed. Rep., 464); from this order an appeal was prosecuted to the circuit court of appeals for the third circuit, which in all things reversed the decree of the court below, (134 Fed. Rep., 331); thereupon the said cause was removed to the Supreme Court of the United States by certiorari, and the decree of the circuit court of appeals was affirmed and the cause was remanded to the circuit court with directions to dismiss the bill of complaint;

That the decision by the Supreme Court of the United States, that the said parties were not entitled to relief, was in part placed upon the ground that the said Northern Pacific system, in connection with the system of the Chicago, Burlington & Quincy Railway Company, above referred to, was competitive with the Union Pacific Railroad system, and the delivery to the complainants in said cause of a majority of the total Northern Pacific Railway Company stock would be in violation of said act of July 2, 1890 (197 U. S., 244, 297);

That the said defendants, Harriman, Schiff, Kahn, Stillman, Union Pacific Railroad Company, and their associates, caused the said action last above described to be prosecuted for the sole purpose of effectuating the said conspiracy so originally entered into to restrain trade and commerce, smother competition, and monopolize such trade and commerce among the several States, and with foreign nations, as hereinbefore more fully set forth;

That after the said decision of the Supreme Court of the United States the said Northern Securities Company proceeded with
780 the distribution of the shares of said Northern Pacific Railway Company and said Great Northern Railway Company, as proposed, and said Oregon Short Line Railroad Company received many million dollars, par value, of the shares of said Northern Pacific Railway Company and said Great Northern Railway Company;

That a certain amount of the said stocks have been since disposed of by said Oregon Short Line Railroad Company, but that it is still the owner of large amounts of the same, as complainant is informed and believes, which said shares, and each and all of them are illegally held by said Oregon Short Line Railroad Company as the agent and representative of said conspirators, and are held pursuant to the said conspiracy and not otherwise.

VI. Complainant further avers that prior to the year 1902 the defendant, William A. Clark, together with certain associates, caused to be incorporated the said defendant San Pedro, Los Angeles & Salt Lake Railroad Company for the purpose of acquiring and constructing an independent competing line of railway from tide water at San Pedro, Cal., through Los Angeles, and across the States of California and Nevada and a portion of Utah to the city of Salt Lake;

781 That the said corporation acquired a line of railway from San Pedro to Los Angeles, and was engaged in the construction of the balance of its line when the said defendants Harriman, Schiff, Kahn, Stillman, the Union Pacific Railroad Company, and Oregon Short Line Railroad Company, for the sole purpose of restraining trade and commerce among the States and with foreign nations and monopolizing the same as hereinbefore more particularly set forth and of preventing competition between said railway so

the process of construction, and said Union Pacific Railroad system, including the said Southern Pacific system, brought suits of various kinds in the courts for the purpose of harassing and injuring the said railway company and preventing the acquisition of the necessary right of way for the same, put large gangs of men at work to interfere with and prevent construction of the said line, and threatened said Clark, his associates, and said San Pedro, Los Angeles & Salt Lake Railroad, that if said line was completed, the same would be paralleled by said Oregon Short Line, its value would be destroyed, and its ability to secure business or operate at a profit would be taken away, which said threats, litigations, and other interferences were continued for a period of many months, as the result of which
782 the said defendant Clark and his associates were induced to desist from and abandon their proposed independent competing line, and said Harriman and his associates hereinbefore named and said Oregon Short Line Railroad Company on the one part, and the said Clark and his associates upon the other part, combined and confederated together to suppress such proposed competition; and to maintain, continue, and extend the restraint of trade and monopoly heretofore built up and attempted to be built up by said Harriman and his associates, as hereinbefore averred, said Clark joined in said conspiracy to suppress competition in all said territory as hereinbefore set forth, and pursuant to such alliance with said conspirators the said Clark entered into a certain agreement with the defendant Harriman, under date of July 9, 1902, a true and correct copy of which is hereto annexed, marked "Exhibit A," and made a part of this bill as fully as though set forth herein at length;

That pursuant to the said contract made between said defendants Clark and Harriman, certain supplemental deeds, contracts, and agreements in writing were made between the defendant Oregon Short Line Railroad Company, the defendant Union Pacific
783 Railroad Company, the defendant Southern Pacific Company, and said defendant San Pedro, Los Angeles & Salt Lake Railroad Company, in and by which contracts and agreements certain lines of railroad controlled by said Oregon Short Line Railroad Company in southern Utah and the eastern part of Nevada were conveyed to the San Pedro, Los Angeles & Salt Lake Railroad Company, and said Oregon Short Line Railroad Company desisted from its work of constructing a line of railway parallel with the said proposed line of the said San Pedro, Los Angeles & Salt Lake Railroad Company, and withdrew all opposition to the construction of the latter;

That said defendant Harriman secured to said San Pedro, Los Angeles & Salt Lake Railroad Company the use of certain of the tracks owned or controlled by said defendant Southern Pacific Com-

pany and said Atchison, Topeka & Santa Fe Railway Company in southern California, and the balance of the said line of the San Pedro, Los Angeles & Salt Lake Railroad Company between Los Angeles and the tracks of the Southern Pacific Company near Riverside, Cal., between the terminus of and the tracks of the Atchison, Topeka & Santa Fe Railway Company so leased to it near the Cajon Pass, in eastern California, and the terminus of the said line so acquired from the said Oregon Short Line Railroad Company

784 in eastern Nevada were at once constructed by said San Pedro, Los Angeles & Salt Lake Railroad Company, which, by means of said tracks so constructed, leased, and acquired is now engaged in operating a through line from San Pedro to Salt Lake;

That as provided by said contract Exhibit A, and for the purpose of maintaining, extending, and preserving the restraint of trade and commerce among the States and with foreign nations, and monopolizing the same and destroying competition with relation thereto, pursuant to the conspiracy hereinbefore alleged, certain traffic arrangements and contracts were caused by said conspirators Harriman, Schiff, Kahn, Stillman, Union Pacific Railroad Company, Oregon Short Line Railroad Company, William A. Clark, and their associates, to be made between said San Pedro, Los Angeles and Salt Lake Railroad Company, and said Southern Pacific Company, by which it was agreed that upon all local competitive business the said San Pedro, Los Angeles & Salt Lake Railroad Company should adopt the tariffs and schedules of said Southern Pacific Company, and that the same should not be at any time changed without the consent of both parties to said agreement during the period of ninety-

785 nine years thereafter; and certain other contracts were made by which said Oregon Short Line Railroad Company and said San Pedro, Los Angeles & Salt Lake Railroad Company, respectively, bound themselves for a like period of ninety-nine years that they would not build or assist in building any lines of railway in the respective territories served by said companies; that is to say, that the San Pedro, Los Angeles & Salt Lake Railroad Company would not construct any lines of railway north of the parallel of Salt Lake City, Utah, and the Oregon Short Line Railway Company would not construct any lines south of the parallel of Salt Lake City, Utah, except by common consent; it was further agreed between said Union Pacific Railroad Company and said San Pedro, Los Angeles & Salt Lake Railroad Company that the said Union Pacific Railroad Company should have the right to make and establish through rates on all joint business between points reached over the lines of said Union Pacific Railroad Company and points in Utah on the said San Pedro, Los Angeles & Salt Lake Railroad Company; and in many and divers other ways the said San Pedro, Los Angeles & S

Lake Railroad Company surrendered the control of said company and the management of its affairs to the said Harriman and his
86 associates, including said Union Pacific Railroad Company and said Oregon Short Line Railroad Company.

That the said conspirators caused a total issue of $25,000,000 par value of stock of said San Pedro, Los Angeles & Salt Lake Railroad Company to be made, and the same was divided in equal parts between the said Clark, representing himself and his associates, and the said Harriman, representing said Oregon Short Line Railroad Company; and said stock was, with the exception of the shares necessary to qualify the directors of said San Pedro, Los Angeles & Salt Lake Railroad Company, placed in the names of said defendants Harriman and Clark, respectively, and by them transferred to and deposited with the Farmers' Loan and Trust Company, a corporation of the State of New York, as trustee, under an agreement by which said trust company should hold and vote the same at all stockholders' meetings for a long term of years, in such manner as said company might be directed by said Clark and Harriman, a true and correct copy of which agreement is hereto attached, marked "Exhibit B," and made a part hereof, as fully as though herein set forth at length;

That each and all of the acts hereinbefore last described were done pursuant to said original conspiracy to suppress competition
87 and procure a monopoly of the transportation business throughout the territory hereinbefore described, in which conspiracy the said Clark joined, and to which he united himself as above set forth;

That in pursuance of the said combination, confederation, and conspiracy the said lines of railroad so owned and operated by said San Pedro, Los Angeles & Salt Lake Railroad Company are in all respects managed, operated, and controlled by the said conspirators; and there is not, and can not be, while such control continues, any competition whatsoever between the said San Pedro, Los Angeles & Salt Lake Railroad Company and said Southern Pacific Company, or the other lines of railway owned or controlled by said Union Pacific Railroad Company and said Harriman and his associates, as hereinbefore alleged.

VII. Complainant further avers that, pursuant to the said conspiracy to restrain trade and commerce among the several States and with foreign nations, and to monopolize and attempt to monopolize such trade and commerce, and to unlawfully restrain and prevent competition among said railway systems, the said defendants Harriman, Schiff, Kahn, Stillman, Rogers, and Frick did, in or
88 about the early part of the year 1904, make large purchases of stock of the said Atchison, Topeka & Santa Fe Railway Com-

pany, aggregating, as complainant is informed and believes, at least
$30,000,000 par value of said stock, and after making said purchase
the said defendants Schiff, Harriman, and Frick demanded of the
officials of the said Atchison, Topeka & Santa Fe Railway Company
who held the proxies of the holders of a majority of the stock of said
company, that certain of said parties so engaged in said conspiracy
should be chosen and elected as directors of said Atchison, Topeka
& Santa Fe Railway Company; that pursuant to said demand, and
by reason of the fact that under the cumulative system of voting
which was provided for in the charter of said railway company, the
holders of the amount of stock so controlled by said defendants Schiff,
Harriman, Kahn, Stillman, Rogers, and Frick would have been able
to elect two directors of said company, the said officials consented and
agreed that said defendants Rogers and Frick, who had united them-
selves with the said conspiracy so originally made by said Harriman,
Schiff, Kahn, and Stillman, and the various railway companies here-
inbefore mentioned, might be elected as directors of said Atchison,
Topeka & Santa Fe Railway Company, and during the said
789 year 1904 the said defendants Frick and Rogers were so elected
as directors of said Atchison, Topeka & Santa Fe Railway
Company, and have since served and are still serving as such di-
rectors, and that by means thereof the said Union Pacific Railroad
Company, of which said Rogers and Frick are, and during all of said
times have been, directors, and in which they are largely interested,
has had knowledge of the affairs and business of said Atchison, To-
peka & Santa Fe Railway Company;

That in the summer of 1906, for the purpose of making more cer-
tain and effective the restraint of trade and elimination of compe-
tition and the monopolization of commerce hereinbefore referred to,
the said Harriman and his co-conspirators, including said Union
Pacific Railroad Company, caused to be purchased by said Union
Pacific Railroad Company $10,000,000 par value of the stock of said
Atchison, Topeka & Santa Fe Railway Company, and said Union
Pacific Railroad Company is still the owner and holder thereof, as
complainant is informed and believes;

That pursuant to said partial control of said Atchison, Topeka &
Santa Fe Railway Company so obtained by said Harriman and his
associates, including said Union Pacific Railroad Company,
790 competition between the system of railways so controlled by
said Union Pacific Railroad Company and said Atchison,
Topeka & Santa Fe Railway Company has to a large extent been
eliminated; that the said conspirators have caused the said Southern
Pacific Company to abandon certain extensions, improvements, and
additions to their said interstate railway in the State of California,
and the said Atchison, Topeka & Santa Fe Railway Company has

been in the same manner caused and induced to abandon extensions and additions to its said interstate railway lines in said State of California, and said extensions so projected and partially completed have been amalgamated, and the title to the said property placed in the name of a new corporation known as the "Northwestern Pacific Railway Company," the stock of which is owned in equal parts by said Southern Pacific Company and said Atchison, Topeka & Santa Fe Railway Company under a contract by which the control of said lines, additions, and extensions is to be in alternate years exercised by said two companies, respectively, but for the common benefit of said two corporations; and the lines of railway of said Union Pacific Railroad Company, said Southern Pacific Company, and said Atchison, Topeka & Santa Fe Railway Company are operated in harmony with each other under agreements and understandings
791 as to rates and divisions of business.

That all of the said acts hereinbefore enumerated have been done pursuant to the said conspiracy so originally formed by certain of the defendants, as fully set forth in this bill, and in which said conspiracy and confederation said other defendants joined from time to time, as above alleged.

VIII. In consideration whereof, and inasmuch as adequate relief in the premises can only be obtained in this court, the United States of America prays your honors to order, adjudge, and decree that the combination and conspiracy hereinbefore described is unlawful and that all acts done or to be done to carry it out are in derogation of the common rights of all the people of the United States and in violation of the act of Congress of July 2, 1890, entitled "An act to protect trade and commerce against unlawful restraints and monopolies," and that the defendants, and each and every one of them, and their officers, directors, stockholders, agents, and servants, and each and every one of them, be perpetually enjoined from doing any action in pursuance of or for the purpose of carrying out the same, and in addition that the several defendants be respectively enjoined as follows:

792 1. That the defendants, the Union Pacific Railroad Company, the Oregon Short Line Railroad Company, the Oregon Railroad & Navigation Company, and their respective officers, directors, executive committees, and their respective agents and servants, and each and every one of them, be perpetually enjoined from purchasing, acquiring, receiving, holding, voting (whether by proxy or otherwise), or in any manner acting as the owner of any of the shares of the capital stock of either the Northern Pacific Railway Company, the Great Northern Railway Company, the San Pedro, Los Angeles & Salt Lake Railroad Company, the Atchison, Topeka & Santa Fe Railway Company, and the Southern Pacific Company.

2. That the defendant Northern Pacific Railway Company, its stockholders, officers, directors, agents, and servants, and each and every one of them, be perpetually enjoined from in any manner recognizing or accepting the said Union Pacific Railroad Company, the Oregon Short Line Railroad Company, the Oregon Railroad & Navigation Company, or any person or corporation whatsoever, in their interest or in the interest of any one of them, as the owner or holder of any shares of its capital stock, and from permitting said companies, or any person or corporation in their
793 interest or acting for them, to vote such stock, whether by proxy or otherwise, and be further enjoined from paying any dividends upon such stock to either of said companies, or any person or corporation acting for them, or any assigns of said companies, or any person or corporation acting for them, unless authorized by this court, and from recognizing as valid any transfer, mortgage, pledge, or assignment by said companies, or any of them, or any person or corporation in their interest, of such stock unless authorized by this court.

3. That the defendant Great Northern Railway Company, its stockholders, officers, directors, agents, and servants, and each and every one of them, be perpetually enjoined from in any manner recognizing or accepting the said Union Pacific Railroad Company, Oregon Short Line Railroad Company, the Oregon Railroad & Navigation Company, or any person or corporation whatsoever, in their interest or in the interest of any one of them, as the owner or holder of any shares of its capital stock, and from permitting said companies or any person or corporation in their interest or acting for them to vote such stock, whether by proxy or otherwise, and be further enjoined from paying any dividends upon such stock to either of
794 said companies, or any person or corporation acting for them, or any assigns of said companies, or any person or corporation acting for them, unless authorized by this court, and from recognizing as valid any transfer, mortgage, pledge, or assignment by said companies, or any of them, or any person or corporation in their interest of such stock, unless authorized by this court.

4. That the defendant Atchison, Topeka & Santa Fe Railway Company, its stockholders, officers, directors, agents, and servants, and each and every one of them, be perpetually enjoined from in any manner recognizing or accepting the said Union Pacific Railroad Company, the Oregon Short Line Railroad Company, the Oregon Railroad & Navigation Company, or any person or corporation whatsoever, in their interest or in the interest of any one of them, as the owner or holder of any shares of its capital stock, and from per-

mitting said companies or any person or corporation in their interest or acting for them to vote such stock, whether by proxy or otherwise, and be further enjoined from paying dividends upon such stock to either of said companies, or any person or corporation acting for them, or any assigns of said companies, or any person or corporation acting for them, unless authorized by this court, and from
795 recognizing as valid any transfer, mortgage, pledge, or assignment by said companies, or any of them, or any person or corporation in their interest, of such stock, unless authorized by this court.

5. That the defendant Southern Pacific Company, its stockholders, officers, directors, agents, and servants, and each and every one of them, be perpetually enjoined from in any manner recognizing or accepting the said Union Pacific Railroad Company, the Oregon Short Line Railroad Company, the Oregon Railroad & Navigation Company, or any person or corporation whatsoever, in their interest or in the interest of any one of them, as the owner or holder of any shares of its capital stock, and from permitting said companies, or any person or corporation in their interest or acting for them, to vote such stock, whether by proxy or otherwise, and be further enjoined from paying any dividends upon such stock to either of said companies, or any person or corporation acting for them, or any assigns of said companies, or any person or corporation acting for them, unless authorized by this court, and from recognizing as valid any transfer, mortgage, pledge, or assignment by said companies, or any of them, or any person or corporation in their interest, of such stock, unless authorized by this court.

796 6. That the said San Pedro, Los Angeles & Salt Lake Railroad Company, its stockholders, officers, directors, agents, and servants, and each and every one of them, be perpetually enjoined from in any manner recognizing or accepting the said Oregon Short Line Railroad Company or said Harriman as the nominal holder of the stock in said San Pedro, Los Angeles & Salt Lake Railroad Company, issued for the benefit of said Oregon Short Line Railroad Company, or said Farmers' Loan & Trust Company as the depositary of said one-half of the capital stock of said San Pedro, Los Angeles & Salt Lake Railroad Company, as the owner or holder of any shares of the capital stock of said San Pedro, Los Angeles & Salt Lake Railroad Company; and be further enjoined from permitting such parties, or any of them, or any person or corporation in their interest, to vote such stock, whether by proxy or otherwise, and from paying any dividends upon such stock to any of said parties, or their assigns, unless authorized by this court; and from recognizing as valid any transfer, mortgage, pledge, or assignment by said Oregon Short Line

Railroad Company or said Harriman or said Farmers' Loan & Tru
Company unless authorized by this court.

797 7. That the defendant Farmers' Loan & Trust Company, i
trustees, officers, agents, servants, and all persons acting und
its authority, be perpetually enjoined from voting the said stoc
or any stock of the said San Pedro, Los Angeles & Salt Lake Rai
road Company held by it under the said agreement Exhibit B,
any meeting of the stockholders of said railroad corporation; an
that said Farmers' Loan & Trust Company be perpetually enjoine
from transferring or assigning the said stock, or any of the sam
unless authorized by this court.

8. That said defendant W. A. Clark, his agents, servants, and a
persons acting by, through, or under him, be perpetually enjoine
from in any manner carrying out the said contract Exhibit B, an
from voting, either personally or through any proxy or represent
tive, any of the stock of said San Pedro, Los Angeles & Salt Lak
Railroad Company for the purpose of carrying out the said unlawf
combination in restraint of trade and commerce.

9. That the individual defendants named, and their associat
stockholders, and each and every person combining or conspirin
with them and their trustees, agents, and assigns, present or futur
and each and every one of them, be perpetually enjoined fro

798 doing any and every act or thing in furtherance of the com
bination or conspiracy, or tending to carry out the conspiracy
described in this bill of complaint, or intended or tending to com
plete control or partial control of said competing lines of railwa
by the said Union Pacific Railroad Company, the Oregon Short Lin
Railroad Company, or the Oregon Railroad & Navigation Com
pany, or their officers, directors, and executive committees, or in th
control, legal or practical, of any person or persons, association o
corporations, acting for or in lieu of said Union Pacific Railroa
Company or the Oregon Short Line Railroad Company or the Or
gon Railroad & Navigation Company, in the carrying out of th
unlawful combination or conspiracy hereinbefore alleged.

10. That each and all of the acts and doings of said defendant
in pursuance of said conspiracy be decreed to be in violation of sai
act of Congress approved July 2, 1890, entitled "An act to protec
trade and commerce against unlawful restraint and monopolies,
and the acts amendatory thereof, and that a writ of injunction, man
datory or otherwise, as may be necessary, issue out of this cour
enjoining the said defendants, and each and every one of them, an
commanding the said defendants, and each and every one of them
their officers, directors, servants, and agents to desi

799 from the said unlawful acts, and that they and each of them
and all and each of their respective directors, officers, agents

ervants, employees, and all persons acting under or through them
r either of them, or in their behalf, or claiming so to act, be en-
oined, restrained, and prohibited from entering into, taking part in,
r performing any contract, combination, or conspiracy the pur-
ose or effect of which will be as to said trade and commerce among
he several States and Territories and with foreign nations to re-
train trade or to monopolize and attempt to monopolize said trade
nd commerce in violation of the provisions of the said acts of
Congress.

11. And the complainant, the United States of America, prays for
uch other and further relief as the nature of the case may require
nd the court may deem proper in the premises; to the end therefore
hat the United States of America may obtain the relief to which it
s justly entitled in the premises, may it please your honors to grant
nto it writs of subpœna directed to the said defendants, Union Pa-
ific Railroad Company, Oregon Short Line Railroad Company,
Oregon Railroad & Navigation Company, San Pedro, Los Angeles
& Salt Lake Railroad Company, Atchison, Topeka & Santa
00 Fe Railway Company, Southern Pacific Company, Northern
Pacific Railway Company, Great Northern Railway Company,
Farmers' Loan & Trust Company, Edward H. Harriman, Jacob H.
Schiff, Otto H. Kahn, James Stillman, Henry H. Rogers, Henry C.
Frick, and William A. Clark, and their co-conspirators whose names
re unknown to the complainant, as such names may become known to
omplainant and the court be advised thereof, and to each of them,
ommanding them and each of them to appear herein and answer
but not under oath) the allegations contained in the foregoing pe-
tion and abide by and perform such order or decree as the court may
ake in the premises; and that pending the final hearing of this case
temporary restraining order and temporary writ of injunction may
ssue enjoining the defendants and their associates, and each of them,
nd their stockholders, directors, officers, agents, and servants, as
ereinbefore prayed.

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Attorney General of the United States.
01 MILTON D. PURDY,
Assistant to the Attorney General.
FRANK B. KELLOGG,
C. A. SEVERANCE,
Special Assistants to the Attorney
General of the United States.

Exhibit A.

Clark-Harriman agreement, July 9, 1902.

This agreement made and entered into this ninth day of July 1902, by and between William A. Clark, hereinafter designated as Clark, trustee, for his own account and upon account of his associates, who are, with himself, owners of approximately seventy per cent of the capital stock of the California Improvement Company hereinafter called the California Company, and of the capital stock of the Empire Construction Company, hereinafter called the Empire Company, and who own or control, through stock or otherwise, the San Pedro, Los Angeles & Salt Lake Railroad Company, hereinafter called the San Pedro Company, and Los Angeles Terminal Land Company, and Los Angeles Terminal Railway Company, as party of the first part, and Edward H. Harriman, hereinafter designated as Harriman, trustee, as trustee for the Oregon Short Line Railroad Company, hereinafter called the Short Line Company, or such company or companies as he may declare parties to said trust, party of the second part, witnesseth:

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Whereas said California Company is a corporation existing under the laws of the State of Illinois, having an issued capital stock of $2,599,000, but no funded or other debt, and is the owner of all the capital stock of the said Los Angeles Terminal Land Company in the amount of $300,000, and is also the owner of all the capital stock of the said Los Angeles Terminal Railway Company in the amount of $3,000,000, all of which capital stock of said two last-named companies is now in the treasury of said California Company; and the said California Company also owns 25,000 shares of the capital stock of the San Pedro Company in the aggregate amount of $2,500,000 par value, which stock of said San Pedro Company is now issued and held by William A. Clark and R. C. Kerens in trust for the stockholders of said California Company, as their interests may appear; said capital stock of all said companies being divided

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into shares of $100 each; and also owns and claims the right to receive and obtain from said San Pedro Company, to be delivered to W. A. Clark and R. C. Kerens, as trustees for its stockholders as their interests may appear, $2,500,000 par value of the first mortgage bonds of said San Pedro Company when the same shall be hereafter issued; and

Whereas all of the railroad, franchises, rights of way, terminal facilities, and railroad property, and all other property, real, personal, and mixed, acquired by the Los Angeles Terminal Railway Company has been by said company sold and conveyed to the San Pedro Company; and

Whereas the Empire Construction Company is a corporation of
e State of Utah organized for the purpose of providing for the
nancing, construction, and equipment of the railroad of said San
edro Company, with a capital stock of $1,000,000, divided into shares
f $100 each par value, all of which capital stock has been subscribed
r and has been fully paid up and issued; and

Whereas said William A. Clark for himself and his said associ-
es, in whose behalf he now owns or directly controls approximately
seventy per cent of the capital stock of the California Com-
04 pany, the Empire Construction Company, and the San Pedro
Company, and the remainder of said capital stock, being ap-
roximately thirty per cent of said capital stock of said companies,
owned, held, or controlled by others not directly represented by
id Clark; and

Whereas the assets of said Empire Company consist of its claims
gainst and contracts with the said San Pedro Company for money
dvanced, work done, and material furnished on account of the im-
rovement and acquirement of railroad property for said San Pedro
ompany; and

Whereas the San Pedro Company is the owner of the railroad,
uipment, rolling stock, terminal properties, station grounds, and
l real, personal, and mixed property formerly owned by the Los
ngeles Terminal Railway Company, and also owns certain other
ilroads, railroad properties, franchises, rights of way, roadbeds,
ations, station grounds, water stations, equipment, rolling stock,
ols, machines, machinery, supplies, and other property procured
r and intended to be used as a part of the railroad property of the
id San Pedro Company and situated in the States of California,
tah, and Nevada, all of which property is free and clear of any
debts, incumbrance, or charges except the indebtedness to the
05 said Empire Company, and its promise to execute and deliver,
when issued, its said first-mortgage bonds in the aggregate
ar amount of $2,500,000 to William A. Clark and R. C. Kerens,
rustees for said stockholders of said California Company, as afore-
id; and

Whereas the said Los Angeles Terminal Land Company is the
wner of certain real estate situated in Los Angeles County, Cali-
ornia, including a tract of real estate situated on or near the harbor
f San Pedro, in said county and State, all of which property of said
os Angeles Terminal Land Company is free and clear of all incum-
rances, liens, and claims of every kind; and

Whereas said Short Line Company is the owner of and controls and
perates a system of railroads generally described as follows:

A line of railroad extending from Granger, Wyoming, to the
estern boundary of said State, thence across the State of Idaho and

to a terminus at the town of Huntington, Oregon, with branch lines connecting therewith;

Also a line of railroad extending from Salt Lake City, Utah, northerly through Ogden, Utah, to the northern boundary of the State of Utah, and thence north across the State of Idaho to a termi-
806 nus at Silver Bow, Butte, and Garrison, in the State of Montana, with branch lines connecting therewith; the line between McCammon and Pocatello being common to both said lines;

Also a line of railroad extending from Salt Lake City, Utah, southerly through Juab to Milford and Frisco, Utah, together with a branch line extending from Lehi Junction into the Tintic mining district and the branch lines connecting therewith, and also a branch line known as the terminus line, together with various controlled, owned, and auxiliary lines of railroad in the above-named States and the States of Nevada and California.

The Short Line Company, through ownership of capital stock, also owns and controls the railroads of the Utah & Pacific Railway Company, the Utah, Nevada & California Railroad Company (in Nevada), and the Utah, Nevada & California Railroad Company in California, and the new East Tintic Railway Company; and

Whereas the said railroads of the Short Line Company are operated in harmony with and as connections of the railroads of the Union Pacific Railroad Company extending from its terminus near Ogden, Utah, easterly through the States of Utah, Wyoming,
807 Colorado, and Nebraska to a terminus at Council Bluffs, Iowa, and extending from Cheyenne, Wyoming, to Denver, Colorado, and thence easterly through the State of Kansas to a terminus at Kansas City, Missouri, with branch and auxiliary lines in the States of Utah, Colorado, Kansas, and Nebraska; and said lines of railroad of the Short Line Company are also operated in connection with a certain line of railroad of the Southern Pacific Company commencing at Ogden, Utah, and extending westwardly through Utah and Nevada and into California and beyond; and

Whereas the San Pedro Company and the Short Line Company and its auxiliary companies under their respective charters each have power to construct a line of railroad between Salt Lake City and San Pedro Harbor in southern California, via Los Angeles; and

Whereas the parties hereto desire to provide for the establishment, construction, ownership, and operation of a line and system of railroad between said termini by using therefor a part of the lines of railroad now owned or controlled by the Short Line Company, and all the railroads and properties of the San Pedro Company now owned by it or owned in its interest or for its use, and by connec-

ing said several lines, either by the construction of a new line
308 or by securing leasehold or trackage rights over other lines of railroad to so connect said lines, and by means thereof to make one connected through line of railroad between said termini, to the end that the same may constitute a new through transportation line for the use of the business of said San Pedro Company and said Short Line Company and their connections, and for the carriage of business which may originate on or be destined to points on or beyond their respective lines, or which may be delivered to them, or either of them, by connecting railroads, and for the carriage of business between stations on their respective lines and between all points on or beyond their respective lines, as well as to all points on or beyond the lines of railroad owned or operated by the connections of said Short Line Company or said San Pedro Company, as aforesaid, upon through tariffs to be jointly made and lawfully published, and upon just and fair divisions of through rates and charges upon interchanged business;

Now, therefore, for the purposes aforesaid and to accomplish the same the parties hereto have covenanted and do hereby mutually covenant and agree to and with each other as follows:

309 Article first.

SECTION 1. The said William A. Clark, for himself and as trustee for his said associates, in consideration of the premises and of the undertakings of said Edward H. Harriman, as trustee as aforesaid, hereby covenants and agrees to and with the said Edward H. Harriman, as trustee as aforesaid, as follows:

That he will sell at the prices defined in section 2 hereof, and within six months after the date hereof cause to be assigned and delivered to said Harriman as such trustee, or otherwise as provided by section 4 of this article, an equal undivided half interest in approximately seventy per cent of the capital stock of each of the companies below named, that is to say:

(a) An undivided half interest in said approximately seventy per cent of the capital stock of the California Improvement Company held by said Clark and his associates as aforesaid, and through the medium of said stock an undivided half interest in said approximately seventy per cent of $2,500,000 par value of the first mortgage bonds of the said San Pedro Company by it agreed to be issued and delivered to said William A. Clark and R. C. Kerens, trustees as aforesaid.

310 (b) An equal undivided half interest in said approximately seventy per cent of the outstanding capital stock of said San Pedro company owned by said Clark and his associates but held in the

names of Clark and Kerens, trustees, and one-half of the outstanding qualifying shares issued to the names of the present stockholders of said company, about sixteen in number.

(c) An equal undivided half interest in said approximately seventy per cent of the said capital stock of the Empire Construction Company.

(d) An undivided half interest in said approximately seventy per cent of the capital stock of the Los Angeles Terminal Railway Company.

(e) An equal undivided half interest in said approximately seventy per cent of the said capital stock of the Los Angeles Terminal Land Company;

And that he will endeavor to secure all of the remainder of the stock of said several companies to and for himself and his associates as to one undivided half thereof and to and for said Harriman, trustee, as to the other undivided half thereof, and at prices satisfactory to the parties hereto as hereinafter provided.

811 SECTION 2. In consideration of the foregoing the said Harriman as trustee as aforesaid undertakes to buy an undivided half of said approximately seventy per cent of said outstanding capital stock of each said California company and said Empire Company, and to pay therefor amounts to be determined as follows: For such of said stock as is sold to him by said Clark individually he shall pay, and said Clark shall receive payment at the amount and rate which the same cost the said Clark, with four per cent interest thereon from the time he acquired the same, less any amounts which the said Clark shall have received directly or indirectly as dividends or profits from said companies or in connection with said stock; provided, however, that if no dividends or profits have been so received the entire earnings of said properties since the purchase of the stocks thereof by said Clark shall have been applied or used in the operation, betterments, or extensions of the said properties, or shall now be in the treasury of the said companies; and that as to the stock the undivided half of which is so purchased by said Harriman, as trustee, from the associates of said Clark, the prices and conditions of sale shall be the same as above

812 provided for the purchase of the said Clark's individual stock as above provided, unless the parties hereto shall hereafter otherwise agree.

SECTION 3. The said Harriman, as trustee, further covenants and agrees that he will join with said Clark, trustee, in the purchase at prices satisfactory to both parties hereto, of the remaining outstanding approximately thirty per cent of said stocks, and that the same when so purchased for joint account of said Clark and himself as such trustees shall be transferred and assigned to and held jointly

in the names of himself and said Clark as hereinafter provided, or to and held in the name of a trust company as trustee as in section 4 hereof provided, it being the intention of this agreement that the said Clark and his associates, and the said Harriman, as trustee as aforesaid, as such trustee, shall own each an equal undivided half of all of the capital stocks of all of the above-named companies.

SECTION 4. It is hereby agreed that all of said capital stock in which an undivided half interest as aforesaid shall be purchased by said Harriman, trustee, under the provision of said sections 1, 2, and 3, hereof shall be transferred upon the books of said several companies either to "William A. Clark, trustee for himself and
813 his associates, and Edward H. Harriman, as trustee," and that all of the capital stock of the San Pedro Company now outstanding, so to be held by joint title as above provided, shall, unless the parties hereto otherwise agree, be in like manner transferred to and stand upon the books of said companies in the names of said Clark and Harriman, trustees, together with all of the stock of the San Pedro Company which shall be hereafter issued, and as the same shall be issued, and shall be represented by certificates in the joint names of "William A. Clark, as trustee for himself and his associates, and Edward H. Harriman, as trustee," and each of the parties hereto shall have the possession and custody of certificates representing one-half in number and par value of said stock when so transferred to the parties hereto as aforesaid, and neither party hereto shall in any manner dispose of said holdings of the said capital stock of the said California Company, or said Empire Company, or of said San Pedro Company, or any part thereof, or any interest therein, for the full period of ten years after the opening for business of said through line of said San Pedro Company as in this agreement provided, without first obtaining the consent of the other party hereto, nor at any time without giving said other party hereto the right to pur-
814 chase such holdings, or interest therein, so offered for sale, on as favorable terms as the same are offered for sale or agreed to be sold to any other person or company. At the end of said period of ten years the said then jointly held stock and the certificates thereof may be, and shall be at the request of either party hereto, divided between said Harriman and Clark, as trustees, according to their respective interests; provided, however, that if the parties hereto shall agree upon a trust company to be the holder of said certificate of stock, as trustee for the said "William A. Clark, trustee, for himself and his associates, and Edward H. Harriman, as trustee," all of the said several shares of stock and certificates representing the same referred to in this section shall be transferred upon the books of the said several corporations to said trust company as trustee, and certificates duly issued to it therefor as trustee, to be held by it in

trust for the parties hereto, in accordance with and subject to
terms of an agreement to be executed between the parties hereto
the said trust company concerning the holding of said shares.

The said last-named agreement shall, among other thi
815 provide, first, that said trust company shall issue to the par
hereto certificates of interest running to the said "William
Clark, trustee, for himself and his associates, and Edward H. Ha
man, trustee," jointly, each party hereto to have possession of cer
cates representing one-half in number of the shares and one-half
par value thereof, which may be deposited with the said trustee; a
second, that said trust company will, from time to time, when join
requested by the said "William A. Clark, trustee, for himself
his associates, and Edward H. Harriman, trustee," give and is
to such person or persons as said parties hereto may direct a pro
or proxies authorizing the person or persons named in said proxy
proxies to vote any and all of said stock at any meeting of
stockholders of said several companies; and, third, that said tr
company shall pay over to the parties hereto, or such persons as th
shall jointly direct, any and all individuals, whether of stocks, bon
moneys, or property of any sort belonging to any of said seve
corporations, and which may be paid to or received by said tr
company in any manner by reason of its holdings of any of s
capital stock as aforesaid, together with such other provisions
may be hereafter agreed upon touching instructions wh
816 may, from time to time, be given to said trustees jointly
the parties hereto, said certificates of interest above named
be held and possessed by the parties hereto, but neither party sh
in any manner dispose of said certificates of interest, or any p
thereof, or of any interest therein, before the full period of ten ye
after the opening for business of said through line of said San Pe
Company, as in this agreement provided, without first obtaining t
consent of the other party hereto to such transfer, nor at any ti
without giving such other party hereto the right to purchase su
holdings or certificates offered for sale on as favorable terms as t
same are offered for sale or agreed to be sold to any other perso
company. At the end of said period of ten years said certific
of interest may be surrendered by the parties hereto, or by the hold
thereof, to said trust company, which shall thereupon assign a
deliver the said stock certificates so held by it to the said holders
said certificates of interest in number and par value of shares nam
in such surrendered certificates of interest, and said shares of sto
may then be transferred upon the corporate books of said seve
companies accordingly. At any time thereafter said certi
817 cates of stock issued jointly to said "Clark, trustee, and Har
man, trustee," may upon demand of either party hereto

ivided between them according to their respective interest, yet ubject, however, to the right of either party hereto to purchase said tock from the other party hereto at the price and on the terms in his section hereinbefore provided.

SECTION 5. It is agreed by the parties hereto that pending the arrying out of this agreement no further stock of the California ompany or of the San Pedro Company shall be issued.

SECTION 6. Upon the completion of the sale and purchase of the id one undivided one-half of the capital stock of said companies, ow owned by said Clark, trustee, will, whenever requested by said Harriman, trustee, cause one-half of the membership of the direc-orate of each of the several companies to be vacated, and will cause irectors to be nominated and named by the said Harriman, trustee, o be elected to the directorate to fill such vacancies in each and every f said several companies, but said Harriman, trustee, appreciating he advantage to be obtained by preserving the independent character of the San Pedro Company, and to that end distrurbing as 18 little as may be the present organization of said company until the through line of said San Pedro Company in this greement mentioned is completed and in operation, will not exercise he right herein given him to name one-half of the said boards of irectors unless he shall deem the exercise of such right necessary o the protection of the interests which he represents.

SECTION 7. The contract relations between the said Empire Con-truction Company and the San Pedro Company not having been efinitely agreed to, it is mutually covenanted and agreed between he parties hereto that within six months from the date hereof a ontract shall be entered into between the said Empire company and he said San Pedro company which shall be in terms satisfactory to he parties hereto.

SECTION 8. It is mutually agreed that in all matters pertaining o the construction, opening for business, and operation of the rail-oad of the San Pedro Company, including the purchase of equip-ent, the making of contracts for construction, and the purchase of aterial therefor, and any and all contracts establishing relations f trackage or traffic with other railway companies, the parties shall act jointly, and no such contracts or arrangements, or any of 19 them, shall be made, or any corporate action taken by said San Pedro Company, the California Company, or the Empire ompany without the approval of both parties hereto, and that in ll such matters each of the parties hereto may be represented by n agent or agents to be appointed by them respectively with power o act for and in the names of their respective principals, and the id parties shall also act jointly in naming and prescribing the ccounting and other officers and agents to be engaged in the oper-

ation of said companies, and each of them, and the auditor of said Empire Company shall be a person selected by the said Harriman trustee, and upon the request of either party hereto any of said officers or agents shall be removed.

SECTION 9. It is understood that pending the carrying out of the terms of this agreement said Harriman, trustee, may by his agent or agents inspect and examine the corporate records, books, accounts, rights, and franchises of each of said several companies.

Article second.

SECTION 1. In consideration of the covenants of the said Clark trustee, for himself and his associates, and also on behalf of the San Pedro Company, in this agreement written, the said Harriman, trustee, as aforesaid, covenants and agrees with said Clark, as trustee, that he will in the time hereinafter stated negotiate with said Short Line Company, and obtain from said Short Line Company the sale and lease to said San Pedro Company of the property hereinafter mentioned, as follows:

(Parcel 1.) A conveyance from said Short Line Company to said San Pedro Company, by good and sufficient deed, free and clear of incumbrance, of all of the following described property: The line of railroad known as the Terminus Branch of the Short Line Railroad from a point or points beginning at the connection of said branch with the yards of the Short Line Company to be agreed upon when said yards are defined as hereinafter provided, in Salt Lake City, county of Salt Lake, State of Utah, and extending in a generally westwardly and southerly direction to a point near Terminus in the county of Tooele, State of Utah, together with a branch line of railroad extending from Saltair Junction to the salt works, in Salt Lake County, State of Utah, except that part of said line the right of way for which is to be surrendered to the United States, and also the partially completed railroad and right of way, surveys, and maps thereof, and railroad property, other than equipment, 821 acquired by the Short Line Company for or used in connection with the construction of its proposed new line of railroad now under construction extending from a point of junction with said Terminus line above named southerly to a point known as Leamington Junction, upon payment therefor by said San Pedro Company as hereinafter provided.

(Parcel 2.) A conveyance from said Short Line Company to said San Pedro Company by a good and sufficient deed containing a covenant to save and protect that said San Pedro Company harmless from the lien or charge of the consolidated mortgage of the Oregon Short Line Railroad Company, dated March 1, 1897, and from

ens of the income A and income B mortgages of said company, for
ll and singular the following described property: All the line of rail-
oad extending from a point near Sandy and about ten miles south
f Salt Lake City, Utah, to be hereafter definitely fixed by a de-
cription and agreement between the parties hereto, and running from
aid point southerly through Provo, Juab, and Leamington to Mil-
ord, Utah, and thence a further distance of about 17 miles to a
erminus of said line of railroad at Frisco, Utah, and also all those
certain other branch lines of railroad owned by said Short
22 Line Company which extend into what is known as the Tintic
district, and which are generally described as follows: A line
xtending from Lehi Junction to the Tintic district, together with
ll branches and interest in joint tracks connecting therewith.

(Parcel 3.) A lease from the said Short Line Company for the
erm of ninety-nine years, granting to said San Pedro Company
he general and common use for its sole and separate business, in
ommon with the Short Line Company, of that part of the main
ine or lines of the said Short Line Company's railroad extending
rom the northerly yard limit point thereon southerly through the
ity of Salt Lake for a distance of about ten miles south from the
outhern limits of said Salt Lake City to a point on said main line
o be hereafter definitely fixed, but which is to be so fixed as to admit
he Short Line Company and the San Pedro Company to the unob-
tructed use of the side tracks and switches necessary or convenient
or use of and access to the side tracks, switches, and properties of
ither of said companies, or to any or all of the smelters or other
ndustrial institutions now existing or that may be hereafter estab-
shed upon or near to said main tracks, together with all side
tracks, stubs, spurs, switches, crossovers, standing places for
23 cars, stations, signals, buildings, coal chutes, shops, round-
houses, turntables, and every other facility or property used
n connection with or appurtenant to the property or business of the
hort Line Company between said northerly yard limit and said
oint near Sandy about ten miles south of the southerly boundary
f said Salt Lake City, as above indicated.

It is agreed that the lease to be executed by the Short Line Com-
any to the San Pedro Company, providing for the said use of the
roperties of the said Short Line Company from the north yard
mit in Salt Lake City to the said point near Sandy, including the
rminal facilities of the Short Line Company in Salt Lake City,
tah, shall be upon the consideration that the San Pedro Company
all pay, in monthly installments, a rental based upon a four per
nt interest charge upon an agreed valuation of said property and
e cost of any capital additions thereto hereafter made, apportioned

between said Short Line Company and said San Pedro Compa
upon the basis of use, but with a fixed minimum proportion to b
paid by said San Pedro Company, and also a proportionate amou
of the expense of maintenance, improvement, and operation of sa
property, including taxes, special assessments, and insuranc
824 the amounts of which rental and other payments and the rul
for ascertaining the same, together with rules for governi
extensions and betterments, and the cost, rental, and use thereof, an
rules governing the operation of said yard shall be agreed to by th
operating officials of said Short Line Company and said San Pedr
Company, subject to the approval of the parties hereto, and whic
shall then be incorporated in said contract of lease, together with a
formal provisions usual to such contracts.

The said property, the use of which for its own separate busine
is let to the San Pedro Company, shall be managed and controll
by the Short Line Company, provided, however, that for cause upo
demand of the San Pedro Company, after thirty days' written no
tice, to be given to the general manager of the Short Line Compa
by the San Pedro Company, a competent superintendent for the sa
shall be jointly chosen by the respective presidents of the San Pedr
Company and the Short Line Company, who shall be charged wi
the care, management, and operation of said property, to the e
that the rights and privileges of the said parties thereto under th
agreement shall be fully secured and preserved. Said superintende
shall be removed or discharged upon reasonable notice upo
825 the written demand of either party to said lease given to t
other party.

(Parcel 4.) The Short Line Company is the owner of all of th
capital stock and first-mortgage bonds of the Utah & Pacific Ra
way Company, which owns a line of railroad extending from M
ford, Utah, to the Nevada-Utah State line at a point known
Uvada, and said Short Line Company owns all of the capital sto
of the Utah, Nevada and California Railroad Company, a co
poration of the State of Nevada, which owns a railroad extendi
from the Utah-Nevada State line, at the point aforesaid, southe
to Calientes, in Lincoln County, Nevada, and a right of way a
partially constructed roadbed for a line of railroad extending fr
said Calientes to a point near Pioche, in said Lincoln County, a
also a right of way and partially constructed roadbed for a line
road extending from said Calientes southwesterly across the So
of Nevada to the Nevada-California State line; and said Short L
Company also owns all of the capital stock of the Utah, Nevada
California Railroad Company in California, a corporation of t
State of California, which claims or owns a right of way extendi
from the Nevada-California State line to a point on the railroad

the Santa Fe Company near Ludlow, Cal., and other railroad
926 properties; said Short Line Company also owns all of the capital stock of the New East Tintic Railway Company, which ast-named company owns a line of railroad in the Tintic district.

The said Harriman, trustee, undertakes and agrees to procure from he Short Line Company an agreement to sell to the San Pedro Com- any, upon payment of prices to be fixed as hereinafter provided, all f the capital stock and first-mortgage bonds of each of the follow- ng-named companies: The said Utah & Pacific Railway Company, he said Utah, Nevada & California Railroad Company, the said Utah, Nevada & California Railroad Company in California, and he said New East Tintic Railway Company, and an agreement from he Short Line Company that it will, upon the request of the San Pedro Company, if necessary, act with the said San Pedro Company n procuring from each of the said several companies lastly above amed a cancellation of the first-mortgage bonds and the release and atisfaction of the said first mortgages, and also in procuring con- eyances to said San Pedro Company from each of said four com- anies above named of all the railroad, franchises, and other property wned by said companies, respectively, so as to vest the said San
Pedro Company with the full title to and ownership in all of
927 said railroads, franchises, and other property in this paragraph mentioned.

(Parcel 5.) The said Harriman, trustee, as aforesaid, undertakes nd agrees that said Short Line Company will sell and convey to he San Pedro Company such a proportion of its equipment appro- riate and proper for use upon and heretofore assigned to use upon s lines of railroad south of Salt Lake City above referred to as may etermine between the chief operating officers of said companies, pon being paid therefor, the value of said equipment as the same hall be found and determined by the joint action of the superintend- nt of motive power of the parties hereto, and said Clark, as trustee, ndertakes that said San Pedro Company will buy said equipment nd pay for the same on the delivery thereof at the price so found nd determined.

SECTION 2. The said Clark, trustee as aforesaid, in consideration f the covenants and agreements of the said Harriman, as trustee as foresaid, as written in this article, hereby undertakes and agrees hat he will negotiate with and obtain from said San Pedro Company covenant and agreement on its part that it will buy from the said hort Line Company and pay for all of the properties referred to
and described in this article as parcels 1, 2, 4, 5, and that the
928 value of the said railroads and properties to be conveyed by the Short Line Company described in said parcels shall be as- rtained and determined, except as to said equipment, in the follow-

ing manner: By a fair estimate of the value thereof, to be agreed upon by the parties hereto, based upon the cost, which is to be the minimum factor, and upon the earning power of the said railroads, franchises, and properties, capitalized at four per cent per annum, respectively described in said several parcels in this article, and that the aggregate value of all of said several properties referred to in said several parcels shall constitute the purchase price thereof to be paid by the San Pedro Company to the Short Line Company upon making the conveyance, transfers, and assignments as aforesaid.

Said agreements shall provide that said San Pedro Company will and shall assume all the obligations of the Short Line Company to contractors and others in respect to the location, relocation, construction, and reconstruction upon the premises described in parcel 1 hereof, and will carry out, fulfill, and perform all of the said Short Line Company's obligations in respect to said work, and will use the said new work when completed as part of the San Pedro
829 Company's main line of railroad, and that said San Pedro Company will accept said lease for the property described in parcel 3 on the terms above written.

All said conveyances, assignments, and transfers and said lease to be made and delivered, and considerations therefor paid contemporaneously with the exchange of stock and the execution of the agreement hereinafter mentioned are to be accomplished within six months from the date hereof.

Article third.

SECTION 1. The said Harriman, as trustee, further covenants and agrees that he will negotiate with the Southern Pacific Company, and if possible, obtain from said company the right for the San Pedro Company to use the tracks of the Southern Pacific Company from the point of its junction with the tracks of the Southern California Company at or near Colton to the point of junction with the tracks of the San Pedro Company at or near Riverside, at a rental that will not exceed four per cent per annum on one-half the valuation of the property of the Southern Pacific Company so used, and a share of the cost of maintenance thereof, including taxes, in proportion to the use of said tracks and property on a wheelage basis.

830 SECTION 2. The said Harriman, as trustee, further covenants and agrees that he will negotiate with the Southern California Railroad Company, and if possible obtain from said company the right for the San Pedro Company to use the tracks of the Southern California Company from the point of its junction with the tracks of the Southern Pacific Company at or near Colton to the point of junction of its tracks with the tracks of the Santa Fe Pacific Company at or near Barstow, at a rental not exceeding four per cent

per annum on one-half the valuation of the property of the Southern California Company so used, and a share of the cost of maintenance thereof, including the taxes, in proportion to the use of said tracks and property on a wheelage basis.

SECTION 3. Said Harriman, as trustee, further covenants and agrees that he will negotiate with the Santa Fe Pacific Railway Company, and if possible obtain from said company the right for the San Pedro Company to use the tracks of the said Santa Fe Pacific Company between Barstow and Ludlow, California, or other point of connection of junction with the proposed line of railroad of the San Pedro Company, at a rental which shall not exceed four per cent per annum on one-half the valuation of the property of the said Santa Fe
331 Pacific Company so used, and a share of the cost of maintenance thereof, including taxes, apportioned upon the use of said tracks and property upon a wheelage basis.

SECTION 4. Each of the several trackage contracts referred to in this article may also contain provisions requiring the San Pedro Company to pay to each of said lessors for water, fuel, and other supplies, labor or material furnished to and for the sole use of the San Pedro Company while upon the tracks of said several companies, and also the usual conditions and agreements for payment by the San Pedro Company to said several lessors for losses and damages to persons or property arising from the negligence or wrongdoing of its sole employees.

Article fourth.

The parties hereto, as trustees aforesaid, hereby covenant and agree to and with each other that the said San Pedro Company and the said Short Line Company shall and will, on or before the date named in section 2 of article second hereof, enter into an agreement, and agreement for a term of ninety-nine years, with each other concerning the new line of transportation and traffic substantially to the effect following:

332 (a) The said new transportation line shall consist of the line of railroad to be created, secured, constructed, and operated under the charter and franchises of the San Pedro Company. Its main line shall commence at the city of Salt Lake, Utah, and run southerly via Garfield, Leamington, Milford, Calientes, and thence through the States of Nevada and California to a junction with the line of railroad of the Santa Fe Pacific Company, and thence by trackage arrangements over the lines of the Santa Fe Pacific Company, the Southern California Company, and the Southern Pacific Company to a connection with the San Pedro Company's line in California at Riverside, and thence via Los Angeles to San Pedro Harbor.

(b) But if for any reason any of said trackage arrangements referred to in article fourth cannot be obtained, then upon and along a line of railroad to be otherwise acquired or to be constructed by the San Pedro Company in lieu thereof, making and constituting a through line of railroad from the city of Salt Lake to San Pedro Harbor via Los Angeles in California.

(c) The branch lines of said new through transportation line shall be the lines of railroad heretofore operated by the Short Line
833 Company and described in parcel 2 above mentioned and the branch lines of the San Pedro Company in southern California, and such other branch lines as may be constructed or acquired hereafter by said San Pedro Company, it being understood that the San Pedro Company shall not hereafter extend its main line of railroad as herein defined, or any branch lines of railroad, or construct or build any line of railroad, or aid any other company or companies in the construction or building of any line or lines of railroad, nor assist or advise in building or constructing any other line of railroad northward or into the territory northward of the parallel of Salt Lake City, Utah.

(d) Said agreement shall further provide that should conditions develop hereafter which require the construction of branch lines connecting with the said San Pedro Company's road south of Salt Lake City the construction of such lines shall be subject to agreement before the commencement thereof, providing, however, that if either party objects to the construction the other may build said branches and connect the same with the main line of said San Pedro Company and be entitled to an interchange of traffic with it upon reasonable terms, it being understood that said branch lines shall not directly or indirectly invade the territory of the Short Line
834 Company north of Salt Lake City, nor be built for the purpose of diverting business naturally tributary to the Short Line Company's road north of Salt Lake City. On the other hand it is agreed and understood that the Short Line Company shall not build branch lines which will invade the territory of the San Pedro Company South of Salt Lake City or divert business which would be naturally tributary to the San Pedro Company's road south of Salt Lake City.

SECTION 2. The San Pedro Company will in said contract agree to construct the railroad from a junction on the line of the Santa Fe Pacific Company's road above mentioned, near Ludlow, or some other agreed point on said line in California, to a connection with the Short Line Company's present road at Calientes, Nevada, and that all of the line of railroad constructed, reconstructed, or to be constructed by the San Pedro Company, and which is to become a portion of the main line thereof, shall be constructed with not less than

seventy-five pound rail and shall be completed and equipped as first class in every respect, the construction and equipment to be of a standard equal at least to that already adopted by the San Pedro Company upon that portion of its road heretofore constructed in southern California.

835 SECTION 3. The Short Line Company will in said contract undertake for itself and its connections, the Union Pacific Railroad Company, and the roads of the Southern Pacific Company, to join with the San Pedro Company in forming through lines of service necessary for the interchange of any and all business which can be carried over said Short Line and its connections in conjunction with said San Pedro Company's road to and from all points which may be reached via Salt Lake City on as favorable terms and conditions as are offered by any carriers competing for the same business.

SECTION 4. In said contract provision shall be made by the parties thereto for the adoption of classifications governing through or interchanged traffic, for the making of through and joint tariffs and rates, and the maintenance thereof, and the publication thereof, as required by law, and provision shall also be made for just and equitable divisions of all such agreed through rates and charges respecting all interchanged business.

SECTION 5. Said agreement shall also contain the following provision:

836 "It is agreed that the interchange of traffic by and between the San Pedro road, on the one hand, and the Short Line Company and the Union Pacific Company, on the other hand, as against any competitor of said Short Line Company or said Union Pacific Company, shall be preferential, but not exclusive, except as hereinafter provided, in favor of said Union Pacific Company; and, in like manner, that the interchange of traffic by and between said Short Line Company and said Union Pacific Company, on the other hand, and the San Pedro Company, on the other hand, as against any competitor of the said San Pedro Company, shall be preferential, but not exclusive, except as hereinafter provided, in favor of the San Pedro Company;

"That is to say,

"Whereas the value of the Short Line Company of its lines in Utah south of Salt Lake City, the transfer of which to the San Pedro Company is hereinbefore provided, consists largely of their relation as feeders of said Short Line Company and said Union Pacific Company, and, whereas it is not practicable to capitalize the value to said Short Line and said Union Pacific Company of said lines south of Salt Lake City as feeders of traffic, or in any other manner to compensate said Short Line Company and said Union

Pacific Company for the loss which would result from the
837 diversion to other carriers of the traffic moving to and from
points on said lines in Utah south of Salt Lake City.

"Now, therefore, it is mutually agreed and understood that all traffic which is either taken up or laid down on the lines of the San Pedro Company in Utah for transportation to or from any and all points which can be reached with reasonable expedition by way of the lines of said Short Line and said Union Pacific Company and their respective connections shall be forwarded exclusively, in so far as that may lawfully be done, by way of and over the lines of said Short Line and said Union Pacific Company. In consideration whereof said Short Line and said Union Pacific Company undertake and are bound hereby to solicit the transportation of traffic to or from points in Utah reached by the roads of said San Pedro Company exclusively in connection with said San Pedro Company against any and all said San Pedro Company's competitors.

"Whereas the owners of said Short Line and said Union Pacific Company had projected and proposed to build a railroad from Calientes, Nevada, to Los Angeles, Cal., or to a connection with a railroad already constructed which would give entrance to
838 Los Angeles and other points in southern California; and whereas the value to said Short Line and said Union Pacific Company of said projected line from Calientes to southern California consisted largely in the profit to be derived from the carriage over the line or lines of road north of Calientes, Nevada, and east of Ogden, Utah, now owned and controlled by said Short Line and said Union Pacific Company, or by persons or companies friendly to said Short Line and said Union Pacific Company, of the traffic interchanged by points on the line of, or to be reached by way of, the line of said projected line between Calientes, Nevada, and Los Angeles, California, with points north of Calientes, Nevada, and Ogden, Utah, reached by or by way of the roads owned or controlled by said Short Line and said Union Pacific Company, or by companies friendly to them; and whereas, by the sale of or by the transfer by lease or purchase to the said San Pedro Company of the line of said Short Line Company south of Salt Lake City, Utah, and the Utah, Nevada & California Railroad between Calientes, Nevada and Uvada, and the Utah & Pacific Railway between Uvada and Milford, Utah, and the abandonment of its projected line between Calientes, Nevada, and Los Angeles, California, in favor of
839 the line proposed to be built by the San Pedro Company, the said Short Line and said Union Pacific Company are deprived of the profit to be derived from the ownership and control of a railroad line from Salt Lake City, Utah, to Los Angeles, California

which might be lawfully conducted in the interest of said Short Line and said Union Pacific Company.

"Now, therefore, it is covenanted and agreed, in part consideration of the transfer to said San Pedro Company of the ownership or control of the lines of the Short Line Company south of Salt Lake City, in Utah, and of said Utah, Nevada & California Railroad between Calientes, Nevada, and Uvada, and the Utah and Pacific Railway between Uvada and Milford, Utah, and the abandonment of its purpose to build said projected line from Calientes, Nevada, to Los Angeles, California, or to said point of connection with a railroad which would give it entrance to Los Angeles, Cal., as follows:

"To unite the roads now owned by said San Pedro Company, or transferred to it by this instrument, or hereafter constructed by it, to form a connected line of railroad between Salt Lake City, Utah, and Los Angeles, California, and other points in California
340 and the roads of the Short Line and Union Pacific Company, so as to form a through line of transportation service between points in California on the said San Pedro Company's roads and points east of Ogden, Utah, on or to be reached by way of the Union Pacific Company's lines and its connecting railroad lines. It is further understood and agreed that in so far as it may lawfully be done and profitably that said through line shall be operated and worked as a unit with respect to all traffic which is, in whole or in part, the subject of competition by other carriers. To this end it is understood and agreed that each of the parties hereto will work, in so far as they lawfully may, to promote the interests of said through line against any other line competing in whole or in part for the same traffic, and each party to said through line is bound in good faith in every lawful way to preferentially promote the interest of said through line in the conduct of all traffic which may be lawfully, reasonably, and profitably conducted by said through line against any and all competitors of said through line.

"But this obligation of preference is not to be understood or to be construed as requiring either party hereto to refuse or neglect to receive and properly forward any of the traffic referred to in
341 this subdivision which shall be offered for transportation by other connecting carriers, nor so as to require either party hereto to refuse or neglect to receive and duly forward in accordance with shipper's instructions any traffic for which the shipper thereof shall have given or tendered written instructions, directing that said traffic be delivered for forwarding to destination to a connecting carrier other than a party hereto; provided, however, that the through rates and the subdivisions of said through rates for traffic thus provided to be interchanged with carriers other than parties

hereto shall not be less than those which at the same time are offered and in effect by or by way of the said through line, and each of the parties hereto is bound to the other party and agrees not to join any connection in through rates which are lower than those which are at the same time in effect or obtainable by the use of said through line, nor to engage with any carrier in any device or practice whatsoever designed to, or which shall have the effect of giving said connection an advantage or preference over said through line or any part thereof in soliciting or carrying the business properly subject to carriage by said through line."

SECTION 6. Said agreement shall also contain the following provision:

842 "No arrangement, contract, covenant, or agreement for shipment or carriage of persons or property shall be made, permitted, or suffered by either party hereto with any other transportation company or carrier by means whereof any such carrier or transportation company shall have or enjoy directly or indirectly any better rates or have any better divisions of through rates or better transportation facilities or service than are had or enjoyed by either of the parties hereto with the other party."

SECTION 7. Said agreement shall also contain the following provision:

"Nothing contained herein shall be construed as limiting the rights or privileges of the Union Pacific Railroad Company or of the Southern Pacific Company or of the Short Line Company in respect to interchange of traffic each with the other."

SECTION 8. Said agreement shall also contain the following provision:

"Said Short Line Company is bound for itself and undertakes to secure a like obligation upon the part of the Union Pacific

843 Company and the roads of said Southern Pacific Company to deal with said San Pedro Company in the matter of interchange of traffic in respect to rates of charge for all traffic and the divisions of said rates and in respect to class and quality of service as they, respectively, deal with each other or with the most favored connection, and not to discriminate in any respect in favor of each other or of any connecting line to the prejudice and disadvantage of said San Pedro Company."

SECTION 9. Said agreement shall also contain the following provision:

"It is covenanted and agreed that said Short Line Company and its connection, the Union Pacific Railroad Company, and each of them, shall have the right to name and make the through rates between points (that is, in both directions) on or reached via their

respective lines, and points on the line of said San Pedro Company in Utah, for business which said Short Line Company or said Union Pacific Company might give to or receive from said San Pedro Company in competition with any and all other connections of said San Pedro Company; provided, however, that on demand said Short Line Company and said Union Pacific Company shall join said San Pedro Company in any through rates necessary to meet
844 the rates offered by any competing through line for such business."

SECTION 10. Said agreement shall also contain the following provision:

"Each party hereto hereby covenants and agrees with the other party that it will not discriminate in any manner whatever against the other party hereto, or any of said other party's connections, in favor of any of the competitors of either of said parties, or in favor of any other connecting carrier in respect of the class or quality of its service, or in any other respect whatever affecting rates or service."

SECTION 11. Said agreement shall also contain the following provision:

"Neither party hereto shall or will agree with or make any convention with a competitor of the other party hereto in any respect designed to or which shall have the effect of excluding such other party from the full and free opportunity to meet any rate or grant any facility offered by such competitor for any and all traffic of every sort, and that the rates and facilities necessary to meet the offers of such competitor shall be held to be common to both parties hereto, subject to established divisions."

845 SECTION 12. Said agreement shall also contain the following provision:

"Said San Pedro Company hereby covenants and grees that it will not now or hereafter interchange traffic with any carrier connecting with it at a point in Utah south of Salt Lake City or in Nevada upon more favorable terms as to character or quality of service, nor at any lower rate of charge or lower divisions of rates, nor in any respect whatever than those governing the interchange of the same or similar traffic with the Short Line Company at Salt Lake City."

SECTION 13. Said agreement shall also contain the following provision:

"Said Short Line Company hereby further undertakes and agrees to negotiate with and secure, if possible, from said Southern Pacific Company an undertaking and agreement on its part for the interchange of traffic in southern California with said San Pedro Company in like manner and upon as favorable terms and conditions as

said Southern Pacific Company has for the interchange of traffic with the Southern California Railroad Company.

"The San Pedro Company covenants and agrees that it will
846 make a covenant or agreement with the Southern Pacific Company for its (said San Pedro Company's) performance of an undertaking that it will in the first instance adopt all lawful rates, tariffs, and charges used by said Southern Pacific Company for the handling of local traffic by said San Pedro Company which is or may be subject to competition between said Southern Pacific Company and said San Pedro Company, and that thereafter neither party shall change said rates without the consent of the other party unless it may be made necessary so to do to meet the rates, charges or tariffs of another competing line of railroad."

SECTION 14. Said agreement shall also contain the following provision:

"The parties hereto mutually covenant and agree to establish a daily through passenger train service, consisting of not less than one train each way, over their respective lines, and over the lines of railroad of the Union Pacific Company to its terminus at Council Bluffs, Iowa, and thence via its connections, if it can accomplish the same, between Council Bluffs, Iowa, and Chicago, Illinois, through to Los Angeles, California. Such joint through passenger
service shall be so established and put in operation whenever
847 either party hereto shall give to the other written notice of its desire so to do. When so established the trains necessary therefore shall be made up of such cars as the managing officials of the parties hereto shall determine. The equipment of such trains shall be of the latest modern design and in all respects the equal of superior of that of competing lines. Each party shall furnish its just quota in proportion to length of haul of such equipment. The time schedules for such joint passenger train shall be no greater in point of time than the shortest time of the trains of competing lines between the same points, and the time established shall be divided pro rata per mile, reasonable allowance to be made for difference in physical conditions, unless otherwise specifically agreed. Either party hereto shall receive the through passenger trains of the other party upon delivery, and dispatch the same regularly, without any delay other than the ordinary station service required by through trains of like class, to their respective destinations. Each party hereto shall maintain all equipment used in such joint passenger service upon its own lines, and car mileage at usual rates shall be paid for all cars of either party used upon the lines of the other in the joint business."

848 SECTION 15. Said agreement shall also contain the following provision:

"It is further covenanted and agreed by and between the parties hereto that for the performance of the joint through freight service over said through line each of the parties hereto shall furnish its proportion of the cars necessary or convenient for use in the transportation of through freight, and that each party shall pay to the other the usual rates allowed for car service; that all joint through freight rates for competitive business shall be divided between the parties hereto and their respective connections, the Union Pacific Railroad Company and the Oregon Railroad & Navigation Company, pro rata per mile in proportion to the length of the haul performed by each, but all arbitrary rates, including the customary Missouri River bridge arbitraries, shall be first deducted and the remainder of the joint or through revenue then divided upon said basis: Provided, That neither party shall be required to perform any service other than switching service in connection with the other party for less than one dollar per ton, except as may be mutually agreed upon from time to time. Joint through rates for business other than that which is subject to the competition of rival carriers
849 shall be divided pro rata per rate; that is to say, each party shall receive of such through rate a share equal to the proportion its separate local rate for identical service separately performed bears to the sum of said local rates of both parties."

SECTION 16. Said agreement shall also contain the following provision:

"Each party shall be liable for all damages to persons or property in its possession or under its charge for the purpose of transportation or storage. When the injury for which damages are claimed can not be located or arises from concealed or unknown causes the damages shall be jointly paid by the parties hereto in the proportion in which the through rates are divided, as hereinafter provided. Cars of each of the parties hereto received on the lines of the other shall be promptly returned, preference being always given to loaded cars. All carload freight shall be sent over the lines of the parties hereto without transfer, when the cars so loaded are in good condition."

SECTION 17. Said agreement shall also contain the following provision:

"It is further mutually covenanted and agreed by and be-
850 tween the parties hereto that all joint through passenger rates shall be divided in the following proportions:

"1. When the joint passenger rate is made of the sum of the published local rates of the parties each party shall receive its local rate.

"2. If the through passenger rate shall be less than the sum of the two or more local rates, made less to meet competition or to promote the public interest, each party shall receive its local rate reduced in the precise proportion that the through rate is less than the rate made by the sum of the locals, and neither party shall in any division receive more than its published local tariffs."

SECTION 18. Said agreement shall also contain the following provision:

"Any difference that shall hereafter arise as to the meaning or the proper construction of this agreement or any part thereof, or as to the performance of any of the covenants and agreements herein contained by either party, shall first be referred to the two presidents of the said parties for settlement, and to that end the party complaining shall deliver to the said presidents a concise written statement of the matter regarding which complaint is made. If
851 the two presidents within thirty days after receiving such complaint are unable to settle such differences so submitted, then the same shall, within thirty days thereafter, be referred to a committee of the two boards of directors to be created as provided in this article. Notice of the time and place of hearing thereof by said committee shall be given by them to the parties hereto at least ten days before the same shall be heard. Each party may submit such evidence and statements as it may think proper for the consideration of such committee at such hearing, and the decision of such committee when reduced to writing and signed by them or a majority of them shall be binding upon the parties hereto, and such written decision shall thereafter be taken and held to be a part of this agreement."

Article fifth.

It is further agreed between the parties hereto that all contracts necessary to carry out the provisions of this agreement shall be formulated and entered into by the parties appropriate to such contracts, whether hereinabove expressly provided for or not.

It is understood and agreed that the execution of this agree-
852 ment by the party of the second part is subject to ratification and approval by the executive committee of the Short Line Company, and that the party of the first part shall be furnished with evidence of such approval when the same shall have been given.

In witness whereof the parties hereto have hereunto set their hands the day and year first above written.

WILLIAM A. CLARK,
In Trust for Himself and His Associates.

EDWARD H. HARRIMAN,
As Trustee, as in Above Instrument Recited.

Exhibit B.

William A. Clark, individually and as a trustee.
Edward H. Harriman, as trustee, and
The Farmers' Loan and Trust Company.

Stock trust agreement.

This agreement, made and entered into this 7th day of June, A. D. 903, by and between William A. Clark, of the city of Butte, in the tate of Montana, contracting for himself and as trustee for his associates, as party of the first part, Edward H. Harriman, 53 of Arden, New York, as trustee, as party of the second part, and The Farmers' Loan and Trust Company, a corporation reated under the laws of the State of New York, hereinafter called he trustee, as party of the third part, witnesseth:

Article I.

SECTION 1. The parties of the first and second parts, in considera-on of the sum of one dollar to each of them in hand paid, the re-ipt whereof is hereby acknowledged, and in further consideration f the acceptance by the trustee of the trust hereby created, do jointly nd severally sell, assign, deliver, and set over unto said trustee under he terms of this instrument, and to the successor in trust, if any, of id trustee, all and singular the following certificates of capital stock nd the stock interest therein or thereby represented, viz:

1. Twenty-five thousand nine hundred and ninety shares of the pital stock of the California Improvement Company;

2. Ten thousand shares of the capital stock of the Empire Con-ruction Company;

3. Three thousand shares of the capital stock of the Los Angeles erminal Land Company;

4. Two hundred and fifty thousand shares of the capital 54 stock of the San Pedro, Los Angeles and Salt Lake Railroad Company (including those held by the directors of said railroad mpany), subject to the pledge and deposit of all the foregoing ares with Kuhn, Loeb & Co., duly assigned in blank, as part of the llateral for a loan of $25,000,000 made by said Kuhn, Loeb & Co. to id railroad company, and in order to secure the transfer of which reunder the said parties of the first and second parts have executed order to said Kuhn, Loeb & Co. as follows:

NEW YORK, ——, 190

To Messrs. Kuhn, Loeb & Co.:

There have heretofore been deposited and pledged with you under the terms of a certain agreement dated June 3, 1903, between yourselves and the San Pedro, Los Angeles, and Salt Lake Railroad Company, as part of the collateral security for the loan therein provided for, two hundred and fifty thousand shares of the capital stock of the said San Pedro, Los Angeles, and Salt Lake Railroad Company, all except directors' shares being owned by William A. Clark and Edward H. Harriman.

This is to authorize and direct you, upon the payment of the loan described in said agreement with the interest thereon, and
855 upon the satisfaction of the obligations therein contained, to deliver all of the said shares of stock to The Farmers' Loan and Trust Company, of the city of New York, to be held by said trust company under the terms of a certain stock-trust agreement dated June 7, 1903.

If hereafter you decline to make the additional loan described in said first-mentioned agreement, and are called upon to surrender the two-sevenths in par amount of said shares of stock as provided in said agreement, this directs you to deliver the stock so to be surrendered to or upon the joint order of William A. Clark and Edward H. Harriman, their executors and administrators.

San Pedro, Los Angeles, and Salt Lake Railroad Company, by ——— ———, president, and ——— ———, secretary.

WILLIAM A. CLARK.
EDWARD H. HARRIMAN.

Notice of above direction accepted:

KUHN, LOEB & CO.

So soon as the said shares of stock so transferred hereunder shall be received by the trustee, the same shall at once be transferred
856 upon the books of said respective corporations into the name of the trustee, and all of the terms and conditions of this instrument shall at once attach thereto and all property in the said stock shall be deemed vested in the trustee as fully and to the same extent, and with the same force and effect, as if actual transfer and delivery of said shares of stock had been, at the time of the execution of this instrument, duly made to the trustee hereunder.

In case Kuhn, Loeb & Co. shall hereafter decline to make the additional loan of $10,000,000 provided for in their agreement with the San Pedro Company, dated June 3, 1903, and shall surrender to the parties of the first and second parts two-sevenths in par amount of the capital stock of the San Pedro Company, the said parties of the first and second parts hereby covenant with each other that they

e same or so much thereof as may be necessary as part of the col-
teral security to be given to some other lender who shall make a
an of not exceeding $10,000,000 to said San Pedro Company, and
at, upon making said loan by said other lender, the parties of the
st and second parts will execute and deliver to said lender an order
r the delivery of said shares of stock by said lender to the trustee,
in like form as said order hereinbefore set forth, requiring
7 said lender, upon the payment or other satisfaction of the loan
and lien under which said shares may be pledged to him, to
liver said stock to said trustee for said account of said parties of
e first and second parts as such trustees; and that in all other re-
ects any shares of stock so surredered to them by said Kuhn, Loeb
Co. shall be deemed sold, transferred, and delivered to the trustee,
d shall be subject to and bound by all of the terms of this agree-
ent.

SECTION 2. The parties of the first and second parts further cove-
nt and agree to and with each other, and to and with the trustee,
at from time to time, and when, individually or as trustee, they
all or may hereafter jointly secure by purchase or otherwise any
ditional shares of the capital stock of either or any of said several
mpanies named in section 1 of this article, whether such stock be
w issued or hereafter may be issued, they will immediately sell,
sign, deliver, and set over to the trustee any and all such shares of
ock, subject to all the terms and trusts of this agreement.

SECTION 3. The parties of the first and second parts further sev-
erally covenant and agree to and with each other, and to and
8 with the trustee, that in case either of the parties of the first
or second parts or their respective cestuis que trust shall here-
ter secure, by purchase or otherwise, any further or additional
ares of capital stock of any of the said companies mentioned in
ction 1 hereof, and not theretofore deposited with the trustee,
hether such capital stock be now issued or at any time hereafter be
sued by any of said companies, such acquisition, however made,
all be for and upon their joint account, at joint cost, and for the
ual benefit and ownership of the parties of the first and second
rts and their respective cestui que trust, and that the same shall
, whether it be stock now issued or stock which may be at any time
reafter issued by any of the said companies, if and when the cost
ereof shall be borne or paid jointly by the parties of the first and
cond parts hereto, in like manner immediately assigned, trans-
rred, and delivered to the trustee, and shall be and become subject
the terms hereof. But if the other of said first party or said second
rty shall not, on demand of the party who made such acquisition,
for whom such acquisition was made, pay one-half of the cost

thereof to the party acquiring the same, then such party who
acquired the same, may, but not otherwise, hold and own
859 additional shares as his own, and free from the terms of
agreement, and free from any claim of interest therein by
other party hereto.

SECTION 4. The parties of the first and second parts further co
nant to and with each other, and to and with the trustee, that in
they or either of them shall in any manner or at any time hereaf
secure or acquire any of said additional shares of said capital stock
any of said companies, which is now issued or may hereafter be is
by any of said companies, he or they will immediately inform and
vise each of the other parties hereto of the time, manner, terms,
price at which such stock was secured or acquired, with an offer
subject the same to the terms of this agreement, and also that th
will at once cause the trustee to be fully informed of any increas
capital stock of any of said companies which may at any time he
after be authorized or made, and of the terms and conditions u
which the same is provided to be issued or is issued.

SECTION 5. The trustee shall have and hold all of the said shares
said capital stock of each of the companies mentioned in section 1
this article, and the certificates representing the same, and which
on the execution hereof, delivered to said trustee, as well a
860 as any and all such shares of capital stock mentioned in s
tions 2 and 3 of this article, which may hereafter be deliv
to the trustee, its successors or assigns, upon the trusts hereina
specified, from and after the execution hereof and for the term
years from the day when the railroad of the San Pedro, Los Ange
and Salt Lake Railroad Company, or its successor, shall be opened
business from Salt Lake City, Utah, to San Pedro, California.

Article II.

Directors' qualifying shares.

Enough shares of capital stock in each of the said companies m
tioned in Article I hereof to qualify the directorate in each of th
shall be reserved from the disposition of said shares of capital st
hereinafter provided, and the same shall be assigned and transfer
by the trustee to the names of the persons selected to be or who sh
be from time to time elected to such directorate. Such directo
qualifying certificates of shares, however, shall be at once assig
in blank by said directors and be delivered to and held in t
custody of the trustee, to be used for said purpose, but subject to
terms of this instrument.

Article III.

The trustee, its successors and assigns, shall cause all of the said ares of capital stock (except those necessary to qualify the directors aforesaid), and all the certificates thereof mentioned in Article I reof, as well as all other shares of capital stock which may at any me hereafter be delivered to the trustee under this instrument, to be mediately and from time to time transferred to it as trustee, upon e respective transfer books of the said several companies, and there- ter the trustee shall be possessed of and hold all of the said stock d certificates as trustee under this instrument, with full power to ld the same as the owner of the legal title thereto, but subject as tween the parties to this instrument and their assigns to all the usts in this instrument declared.

Article IV.

SECTION 1. The trustee shall issue "certificates of interest" against l of said shares of capital stock, and the certificates of capital stock hich may now be, or which may hereafter be at any time issued by y of said several companies, and by or for the parties of the first and second parts deposited with and assigned to the trustee to be and to become subject to the terms of this instrument, which said certificates of interest shall be issued by it to and the names of "William A. Clark, trustee, and Edward H. Harriman, trustee," duly certified and issued under the hand of its proper ficers and entered upon correct books of record which shall be kept the trustee, showing the details of the issuance and transfers of ch certificates in the usual manner and form of well organized corrations dealing with such matters.

SECTION 2. Said certificates may be in substantially the following rm:

The Farmers Loan and Trust Company,

Certificate of interest

in

(Insert name of proper company.)

o. ——. ——— shares.

This certificate of interest is issued to ——— ———, pursuant to e provisions of a certain stock trust agreement, dated June 7, 1903, ade by and between William A. Clark, contracting for himself and trustee for his associates, as party of the first part; Edward H.

Harriman, as trustee, as party of the second part, and
863 undersigned, as party of the third part, and reference to
agreement, an original of which has been lodged with the
signed, is hereby made.

This certificate of interest is based upon ——— ——— shares
the capital stock of the ——— ——— of the par value of one hu
dred dollars each, which have been sold, assigned, delivered, a
transferred to the undersigned as trustee under said agreement.

This certificate is not negotiable and not transferable, except
the written consent of William A. Clark, trustee, and Edward
Harriman, trustee, in the form of transfer and consent endorsed
this certificate, nor until this certificate shall be surrendered to
undersigned for cancellation, as provided by said agreement.

The holder or holders of this certificate of interest is and are
titled to receive the net proceeds (after paying the cost of col
ing and disbursing the same, including the trustee's fees) of
dividend or dividends declared or to be declared and of any
which may come into the possession of the undersigned as the
or owner of any of the shares of capital stock of the said —
——— Company in respect of which this certificate is
864 At the end of the full term of ten years from the da
which the railroad of the San Pedro, Los Angeles and Salt L
Railroad Company shall be opened for business from Salt Lake C
Utah, to San Pedro, California, the registered holder of this cer
cate may surrender the same to the undersigned, and upon pay
of any sums due or to become due to the trustee under the ter
said agreement shall be entitled to receive from the trustee cer
cates in the name of such holder for the shares of capital stock
respect of which this certificate was issued.

By the acceptance of this certificate the holder thereof shall
bound by all the terms and provisions of said agreement, dated J
7, 1903, as fully and to the same extent as if such holder were a p
thereto and had duly executed an agreement to abide thereby;
no holder thereof, other than "William A. Clark, trustee, and
ward H. Harriman, trustee," whether the cestui que trust of
Clark or of said Harriman, nor any other persons, shall have
interest, legal or equitable, in this certificate or in the shares of
ital stock upon which the same is issued, unless or until the
Clark, trustee, and said Harriman, trustee, shall have each in w
consented thereto.

865 When so assigned, this certificate shall be transferred
upon surrender thereof to the trustee and upon the exec

y the transferee of an agreement in the form prescribed by the said tock trust agreement.

THE FARMERS' LOAN AND TRUST COMPANY,
Trustee.

By ——— ———.

Attest:

———— ————,
Secretary.

There shall be endorsed upon said certificates of interest a form f assignment substantially in the following form:

Assignment.

For value received, —— hereby sell, assign, and transfer unto —— ——— the within certificate of interest based upon ——— — shares of the capital stock of the ——— ———, and all of — interest therein, and do hereby irrevocably appoint ——— — attorney to transfer said certificate upon the books of The armers' Loan and Trust Company, with full power of substitution n the premises.

Dated ———.

No such assignment shall become effectual to pass any title to or right or interest in the said certificate, or in the shares f capital stock upon which the same is based, until there shall have een endorsed in writing thereon a consent substantially in the fol- owing form:

"Consent is hereby given to the above assignment of this certifi- ate, and to the transfer thereof, to ——— ———.

"WILLIAM A. CLARK, *Trustee.*
"EDWARD H. HARRIMAN, *Trustee.*

"In presence of:
———— ————."

Nor shall such assignment or consent be received from any in- ended transferee by the trustee for any purpose until such intended ransferee shall have executed and delivered to the trustee, by en- orsing the same upon such certificate so to be transferred, an under- aking in the following form:

"The undersigned accept this certificate, subject to all the terms nd conditions of the agreement dated June 3, 1903, therein men- ioned, by which the undersigned agree to be fully bound as if a arty thereto, and agree ——— ——— to hold all interest acquired hereby, and by any new certificate of interest, if any, issued in re- pect thereof under and subject to the terms of said agreement."

867 Upon the due execution of all of which and the presentation thereof to the trustee, it may, but not otherwise, cause such transfers to be made and entered of record.

SECTION 3. Said certificates of interest as to the shares of stock in each of said several companies shall be issued and delivered to the parties of the first and second parts in their joint names, in equal amount, so that each of the parties of the first and second parts shall respectively receive from the trustee each one-half in number and one-half in par value of the capital stock in each of said companies now or from time to time transferred or delivered to the trustee and in respect of which said certificates of interest may be issued.

SECTION 4. No transfer of any of such certificates of interest shall be made by the trustee upon its books or otherwise, unless such certificates shall be first surrendered and returned to the trustee for cancellation and shall have been by it canceled; nor unless the same shall each bear endorsed thereon the written consent to such transfer signed by each of said parties of the first and second parts, nor until such proposed transferee shall in writing consent to all the terms of
868 this instrument and agree to be bound thereby as if a party thereto, and to be bound and limited by the terms and conditions written in and endorsed upon said certificates of interest.

SECTION 5. The trustee may from time to time make such reasonable rules respecting the making and issuance of certificates of interest, and the transfer thereof, as it may find necessary; and, upon the written request of all the holders of outstanding certificates of interest, it shall make, adopt, and enforce any rule or regulation concerning the assignment or transfer of such certificates of interest which all of said holders of outstanding certificates of interest may so request.

Article V.

SECTION 1. The trustee may collect any dividends paid or payable declared or to be declared, by any of said companies, and any funds due to any of them from any source whatever, in respect of the said shares of capital stock so held by the trustee, and shall immediately upon such receipt and collection of any such dividends or funds, pay over any such dividends or funds to the parties of the first and second parts, or their successors or assigns, ratably and according
869 to their respective holdings of said certificates of interest representing the stock upon which such dividends or funds have been paid as appears by the records of the trustee, and may also pay over the like ratable proportion of any such dividends or funds to any registered holder of such certificates of interest, whose holding thereof was acquired by any assignment of such certificates of interest, with and upon the written consent of the parties of the first

and second parts, and upon the said transfers, consent, and undertaking, as provided by section 4 of Article IV of this agreement.

SECTION 2. The trustee will at any time, upon the written request of the parties of the first and second parts, or the successor in trust of either of them, issue to the persons jointly named by said parties of the first and second parts, or said successor, its proxy or proxies upon all of the shares of capital stock of each of said several companies then held by it and registered in its name, to be voted at any annual, special, adjourned, or called meeting, of the stockholders of any of the said companies.

SECTION 3. At least sixty days before the day of the annual meeting of the stockholders of any of the said companies, the parties of the first and second parts shall, in writing, either jointly or
870 separately, notify the trustee of the names of the persons to whom the trustee shall issue the proxy or proxies mentioned in section 2 of this article. If the names so notified to the trustee are not identical, the trustee shall transmit to each of the parties a copy of the said notice of the other party, and unless thirty days before the day of such annual meeting the parties of the first and second parts shall have lodged with the trustee an agreement or consent to the names of the same persons to whom said proxies shall issue, it shall then be the duty of the trustee, not less than twenty days before the day of such meeting of the stockholders, to call, in writing, upon each of the parties of the first and second parts to each nominate a number of persons, not more than one-half of the number of persons to be elected as directors at such meeting, and thereupon the trustee shall issue its proxy or proxies to such person or attorney as it may select to appear at such annual meeting, and there to vote all the shares of capital stock in such company so held by said trustee, for directors thereof, one-half of the number of directors to be the persons so nominated to it for such purpose by each of the said parties of the first and second parts, respectively. Any communication provided to be made hereby may be made between the parties
871 or their duly appointed attorney by letter or by telegrams sent at the expense of the trust. In case the number of directors to be chosen for any such company shall be an odd number, then the president of the trustee shall be elected as one of said directors, unless said parties of the first and second parts shall jointly nominate another person to be so elected, and the remaining directors shall be elected, one-half from the persons nominated for such office by the party of the first part, and one-half from the persons nominated for such office by the party of the second part.

SECTION 4. If the said parties shall include in their said nominations of persons to be voted for as directors by the trustee, as provided for in section 3 of this article, the names of the same person or

persons, the trustee shall, by letter or by telegram, notify each of said parties of the first and second parts of the fact of such double nomination, and in such case either of said parties may withdraw the name of the person so twice nominated and substitute the name of another person to be voted for by the trustee or its attorney in fact; but in case either of said parties of the first or second parts shall fail to nominate some person in lieu of the person so nomi-
872 nated by both parties, then the president of the trustee shall select some managing officer of the trustee to be voted for as such director in lieu of one of said double nominations by one of said parties.

SECTION 5. In case it shall happen at any time while the capital stock of the said several companies, or any of them, remains deposited with the trustee, that the stockholders in any of said companies shall be called at any regular or special meeting to act upon any question other than the election of directors, the trustee shall issue its proxy upon said capital stock to the person or persons whom the said parties of the first and second parts may jointly request. In case the said parties shall not agree as to the person so to be appointed, the trustee shall select some discreet and proper person to vote upon such question in such meeting in the manner and as the parties hereto may in writing request; and in case no such request shall be jointly made by said parties, then the trustee shall vote upon such question upon the stock so held by it in the manner and as the president of the trustee shall determine.

SECTION 6. The initiative in all matters in this article provided shall be taken by the parties of the first and second parts
873 hereto, and the trustee shall not be charged with any duty except as in this article provided, in case of a failure of the said parties of the first and second parts to agree in direction to the trustee as in this instrument provided.

Article VI.

SECTION 1. None of the stock held by the trustee under the terms of this agreement and none of the certificates of interest issued thereunder shall, until the end of the full term of the ten years hereinafter created, be in any manner or for any purpose sold, assigned or transferred, or otherwise disposed of, or shall any interest therein or right thereto, legal or equitable, be sold, transferred, or assigned or otherwise disposed of by either the party of the first or the party of the second part hereto except upon the consent in writing of the other of said parties first had and obtained and lodged with the trustee; nor unless the party hereto desiring to effect such sale, assignment, or transfer, or other disposition shall have first offered the

other of said parties hereto the right and opportunity to purchase the same stock certificates, interest, legal or equitable, or right, on as favorable terms, and such party shall neglect to avail himself
874 of such opportunity for the space of thirty days.

SECTION 2. Nothing in this article, however, shall be construed to prohibit either of the said parties of the first and second parts, respectively, from making and delivering to himself or to his cestuis que trust or associates receipts or other instruments, in form negotiable or otherwise, hereinafter termed "certificates of interest," in respect of the number of shares of stock in each of said companies which he has or which such associates or cestuis que trust have deposited under said trust or with their said respective personal trustees under some agreement satisfactory to such personal trustee and to the owners of such capital stock so deposited with the said personal trustee; but such agreement or arrangement shall be so made as to provide that none of the owners of such certificates of interest so issued by either one of the said personal trustees shall, by virtue of such ownership or otherwise, in any manner interfere with the control, ownership, use, custody, and possession of said third party of the capital stock so deposited by said personal trustee with the trustee under this agreement, nor shall any such arrangement or agreement charge the trustee under this agreement
875 with any duty to any holder of any such personal trustee certificate, nor shall the party of the third part be required to recognize any such personal trustee certificate in any manner or for any purpose whatever.

SECTION 3. At the end of the term hereby created the parties of the first and second parts covenant to and with each other and to and with the trustee to surrender to the said trustee any and all certificates of interest issued by the trustee and respectively held by them, or either of them, and thereupon the trustee may, and it hereby covenants and agrees to and with each of the other parties hereto that it will, upon the request of either of said other parties, assign the capital stock or capital-stock certificates represented by said surrendered certificates of interest jointly to and in the names of the parties of the first and second parts, and shall deliver to each of the said parties of the first and second parts the certificates of capital stock in any of said several companies which are represented by the certificates of interest issued against the said capital stock by the trustee, and which shall be surrendered to the trustee by said respective parties, or it may, upon a like surrender by the holders thereof, assign into the names of such holders of its certificates of
876 interest and deliver to such holder or holders of its said certificates of interest the number of shares of capital stock in any of said companies, and in the par value in respect of which the

trustee had issued its said certificates of interest, provided that such holder or holders of said certificates took and held the same under the terms and upon the written consents of the said parties of the first and second parts, and upon the other conditions provided for by this instrument; and upon such assignment and delivery the said capital stock may be transferred upon the books of the said several companies into the names of such assignees. Upon any such assignment and delivery of said shares of capital stock by the trustees to the holders of any certificate of interest issued by the trustee, the trustee shall not thereafter be charged with any duty of liability in respect of any of said capital stock or certificate of interest.

SECTION 4. Each of the parties of the first and second parts covenants with the other that any and all shares of stock and stock certificates received by him, under the terms of section 3 of this article, will not be sold or offered for sale at any time after receiving the same, until the other of said parties shall have been given
877 the right to purchase such shares of capital stock on as favorable terms as the same or any part thereof are offered for sale or agreed to be sold, or sold to any other person, firm, or company, it being the intention of each of the parties hereto to give to the other a preferential right to purchase any of said shares of capital stock upon any sale or other disposition thereof.

Article VII.

SECTION 1. In case the parties of the first and second parts, respectively, may desire to wind up the business, distribute the assets, or otherwise bring about a dissolution of the said California Improvement Company, the Empire Construction Company and the Los Angeles Terminal Land Company, or some of them, or for any other purpose to withdraw the shares of stock of any of said companies from the trust hereby created, then upon the surrender of the certificates of interest issued by the trustee in respect of the shares of the capital stock of any such company, the trustee may, and upon the joint request of the parties of the first and second parts shall, assign the said stock certificate and deliver the same to such person or persons as may be named in such request; and thereupon the
878 trustee shall not be further charged in respect to any stock in or business of such company and this agreement shall no longer affect the same.

Article VIII.

SECTION 1. The provisions of this agreement shall be binding and in full force and effect from the date hereof and for the further full term of ten years from the day on which the railroad of the

San Pedro, Los Angeles and Salt Lake Railroad Company shall be opened for business between Salt Lake City, Utah, and San Pedro, California; and the parties of the first and second parts covenant and agree that they will cause the San Pedro, Los Angeles and Salt Lake Railroad Company to certify to the trustee the date at which it is so open for business, and that the said certificate shall be conclusive as to the fact so stated.

SECTION 2. It is nevertheless agreed by all the parties hereto that this agreement may at any time be modified, changed, or abrogated, in whole or in part, upon the consent of all of the holders of record of the said certificates of interest issued by the trustee if and when the same is approved in writing by the trustee.

Article IX.

879 SECTION 1. The parties of the first and second parts jointly and severally covenant and agree to and with each other and with the trustee to indemnify it and to save and keep it harmless from any loss, charges, or damages which the trustee may incur by reason of its holding the legal title to or the ownership in and custody of the said several shares of capital stock in any of said several companies.

SECTION 2. They also covenant and agree to pay each one-half of the reasonable compensation to be paid to the trustee for itself and for its agents, servants, or attorneys, for anything done or to be done by them or any of them in the performance of the duties of the trustee under the terms of this instrument, and any costs, damages, or expenses incurred by the trustee in any suit or action which may be brought or conducted by any person having or claiming to have an interest in the subject-matter of the trust estate and in which the trustee may be sued or, if it elect, in which it may voluntarily appear.

Article X.

SECTION 1. In case the said William A. Clark shall at any time die or resign as trustee for his said cestui que trust, or if he shall for any reason be unable to discharge the duties of his trust, then the 880 holder or holders of certificates of interest, issued by said William A. Clark to himself and to the persons who deposited any of said capital stock with said Clark may, by a majority vote of all shares represented in said certificates, select some other person to be trustee in lieu and in place of said William A. Clark; and upon said selection being certified to said trustee by the written certificate of the said holders of said certificates, the cestuis que trust making such selection, the said person so selected in place of said Clark may

execute the copy of said agreement in the custody of the party of the third part, and thereafter shall in all respects, rights, duties, privileges, conditions, and matters be substituted for said Clark to all intents and purposes, as if such person had been originally the party to this instrument instead of said Clark.

SECTION 2. In case the said Edward H. Harriman shall at any time die or resign as trustee for his said cestuis que trust, or if he shall for any reason be unable to discharge the duties of his trust, then the holder or holders of certificates of interest issued by said Edward H. Harriman in respect of said capital stock may, by a majority vote of all of said certificates of interest, select some other person to be trustee in lieu and in place of said Edward H.
881 Harriman; and upon said selection being certified to said trustee by the written certificate of the said holders of said certificates, the cestuis que trust making such selection, the said person so selected in place of said Harriman may execute the copy of said agreement in the custody of the party of the third part, and thereafter shall in all respects, rights, duties, privileges, conditions, and matters be substituted for said Harriman to all intents and purposes as if such person had been originally the party to this instrument instead of said Harriman.

In testimony whereof the said party of the first part and the said party of the second part have hereunto subscribed their names and affixed their seals; and the said party of the third part, for the purpose of signifying its acceptance of the trust herein and hereby created, has caused these presents to be signed by its president, sealed with its corporate seal, and attested by its secretary, the day and year first above written.

Signed in triplicate.

W. A. CLARK, [L.S.]
W. A. CLARK, *as trustee.* [L.S.]
EDWARD H. HARRIMAN, *as trustee.* [L.S.]

882 THE FARMERS' LOAN AND TRUST COMPANY, *Trustee.*

[SEAL.] By E. S. MARSTON, *President.*

Attest:

SAM SLOAN, Jr., *Sec'y.*

883 No. 993. United States Circuit Court, District of Utah.

In equity.

The United States of America, complainant, v. Union Pacific Railroad Company et al., defendants. Answer of the defendant, Edward H. Harriman. (Filed April 6, 1908.)

884 United States Circuit Court, District of Utah. No. 993. In equity.

The United States of America, complainant, vs. Union Pacific Railroad Company, Oregon Short Line Railroad Company, The Oregon Railroad and Navigation Company, The San Pedro, Los Angeles and Salt Lake Railroad Company, The Atchison, Topeka and Santa Fe Railway Company, Southern Pacific Company, Northern Pacific Railway Company, The Great Northern Railway Company, The Farmers' Loan and Trust Company, Edward H. Harriman, Jacob H. Schiff, Otto H. Kahn, James Stillman, Henry H. Rogers, Henry C. Frick, and William A. Clark, defendants.

885 Separate answer of the defendant, Edward H. Harriman, to the original petition of the United States of America.

This defendant now and at all times hereafter saving to himself all manner of benefit and advantage of exception which can or may be taken to the many errors, uncertainties, and other imperfections in the complainant's petition contained, or to so much and such parts thereof as he may be advised it is material or necessary for him to make answer unto, answering, says:

I. He admits that all the corporations mentioned in Subdivision I of the petition were at the times alleged in the petition and are now common carriers employed in the transportation of freight and passengers within and among those States and Territories of the United States in and through which the transportation lines owned by them respectively are located, and not further or otherwise, but were and are to that extent engaged in trade and commerce among the several States and with foreign nations.

II. (1) He denies that from January 1, 1901, or at any time he and the defendants, Jacob H. Schiff, Otto H. Kahn, and
886 James Stillman, with certain other persons, including the defendants, Henry H. Rogers and Henry C. Frick, have owned or controlled a majority of the capital stock of the Union Pacific Railroad Company.

(2) He admits that on the 23d day of May, 1898, he became and ever since has been and still is the chairman of the executive committee of the board of directors of said Union Pacific Railroad Company; and that on the 7th day of January, 1904, he became and ever since has been and still is president of said corporation.

(3) He admits that the said Jacob H. Schiff became a director of said Union Pacific Railroad Company on the 1st day of March, 1898,

and continued to be a director of said company until the 10th day of April, 1906, when he resigned.

(4) He admits that the said Otto H. Kahn became a director of said Union Pacific Railroad Company on the 1st day of July, 1897, and continued to be a director of said company until the 10th day of April, 1906, when he resigned.

(5) He admits that the said James Stillman became a director of said Union Pacific Railroad Company on the 6th day of December, 1897, and continued to be a director of said company until the
887 13th day of February, 1908, when he resigned.

(6) He admits that the said James Stillman was a member of the executive committee of the board of directors of said Union Pacific Railroad Company from the 8th day of December, 1897, until the 13th day of February, 1908, and that the said Otto H. Kahn was a member of said committee from the 8th day of December, 1897, until the 10th day of April, 1906.

(7) He admits that during all of said time the said Jacob H. Schiff and Otto H. Kahn were and still are members of a banking firm of the city of New York, doing business under the name and style of "Kuhn, Loeb & Co," but denies that said banking house has been or is the "fiscal agent" of the defendant Union Pacific Railroad Company; and he admits that some of the stocks referred to in the petition were bought by said Union Pacific Railroad Company and said Oregon Short Line Railroad Company, respectively, from time to time through said banking house, and that some of the bonds issued by said companies were sold to said firm.

(8) He admits that defendant Henry H. Rogers became a director of said Union Pacific Railroad Company on the 8th day of October, 1901, and that defendant Henry C. Frick became a director of
888 said Union Pacific Railroad Company on the 11th day of October, 1904, and that both the said Rogers and the said Frick have ever since been and still are members of said board of directors.

(9) Except as herein admitted he denies each and every allegation of Subdivision II of the petition.

III. (1) He admits that defendant Union Pacific Railroad Company owns a line of railroad extending from Council Bluffs, Iowa, to Ogden, Utah, which it acquired in 1897 at a sale made under decrees foreclosing the lien of the Government of the United States thereon arising under the acts of Congress mentioned in Subdivision III of the petition and foreclosing mortgages securing bonds issued by the company incorporated under said act of Congress approved July 1, 1862, to construct said railroad, and has ever since owned said line.

(2) He admits that defendant Union Pacific Railroad Company owns a line of railroad from Kansas City, Missouri, to Denver, Colorado, which it acquired in 1898 under decrees foreclosing the lien of the Government of the United States thereon arising under the acts of Congress mentioned in said subdivision of the petition and foreclosing mortgages securing bonds issued by the "Union Pacific Railroad Company, eastern division," and the "Kansas Pacific Railway Company," and has ever since owned said line.

(3) He admits that defendant Union Pacific Railroad Company owns a line of railroad extending from Denver to Cheyenne, Wyoming, which it acquired at a sale under foreclosure decrees in 1898, and has ever since owned said line; and that said defendant Union Pacific Railroad Company also owns a line of railroad from Julesburg to La Salle, Colorado, which it acquired by purchase from the owners thereof in 1899, and which it has ever since owned.

(4) He admits the consolidation of "The Union Pacific Railroad Company," incorporated under the act of Congress approved July 1, 1862, the "Kansas Pacific Railway Company," and the "Denver Pacific Railway and Telegraph Company" into and under the name, style, and title of "The Union Pacific Railway Company," and avers that such consolidation occurred on or about January 24, 1880.

(5) He admits that the Central Pacific Railroad Company of California was organized under the laws of the State of California, and he admits that the Western Pacific Railroad Company was also organized under the laws of said State. He admits that the said Central Pacific Railroad Company of California and the said Western Pacific Railroad Company were consolidated into and under the name, style, and title of "Central Pacific Railroad Company." He admits that said Western Pacific Railroad Company constructed a line of railroad from San Francisco to Sacramento, California, and that said Central Pacific Railroad Company commenced the construction, and after the consolidation aforesaid the company formed by such consolidation completed the said railroad from Sacramento to Ogden, Utah, where it connects with the main line of the Union Pacific Railroad Company.

(6) He refers to the said acts of Congress approved July 1, 1862 (12 Stat., 489), July 2, 1864 (13 Stat., 356), and June 20, 1874 (18 Stat., 111), for answer to the allegations of the petitions respecting the aid granted in bonds and land to, and the duties and responsibilities imposed by said acts upon, the corporations aided and authorized by said acts to construct the railroads therein mentioned and provided for and to the several acts and joint resolutions of Congress amendatory of and supplementary to the aforesaid acts. (13 Stat., 356; 12 Stat., 538; 13 Stat., 504; 13 Stat., 573; 14 Stat., 355; 14 Stat.,

356; 14 Stat., 79; 14 Stat., 292; 15 Stat., 39; 15 Stat., 79;
891 Stat., 324; 15 Stat., 348; 16 Stat., 56; 16 Stat., 121; 16 St
430; 17 Stat., 508; 18 Stat., 111; 18 Stat., 200; 18 Stat.,
20 Stat., 56; 20 Stat., 169; 24 Stat., 488; 25 Stat., 382; 25 Stat.,

(7) He admits that since 1897 the Oregon Short Line Railr
Company, and since 1896 the Oregon Railroad and Navigation C
pany each has owned lines of railroad as alleged in Subdivision
of the petition.

(8) He admits that defendants Union Pacific Railroad Compa
Oregon Short Line Railroad Company, and the Oregon Railro
and Navigation Company each owns and operates important bra
lines of railroad.

(9) He admits that prior to January 1, 1901, the Union Pac
Railroad Company acquired and has ever since owned and still o
substantially all the capital stock of defendant Oregon Short L
Railroad Company, and that prior to said date the Oregon Sh
Line Railroad Company acquired and has ever since owned and s
owns substantially all the capital stock of defendant the Oreg
Railroad and Navigation Company.

(10) He admits that by means of such stock ownership the Un
Pacific Railroad Company has since its acquisition been a
892 to elect, by voting upon such stock through its proxies,
directors of said Oregon Short Line Railroad Company, a
that the latter, by voting upon said stock through its proxies, h
elected the directors of the Oregon Railroad and Navigation Co
pany, but he avers that the railroads and other property of t
Oregon Short Line Railroad Company have at all times been co
trolled, managed, and operated by said Oregon Short Line Railr
Company, in its own name and by its own officers and agents: a
that the railroads and other property of the Oregon Railroad a
Navigation Company have at all times been controlled, managed, a
operated by the Oregon Railroad and Navigation Company in
own name and by its own officers and agents.

(11) He admits that prior to and at all times since the 1st day
January, 1901, the lines of railroad owned by defendant Un
Pacific Railroad Company, Oregon Short Line Railroad Compa
and the Oregon Railroad and Navigation Company, respectiv
have been operated as one system, and that said lines, extending fr
Council Bluffs, Iowa, and Kansas City, Missouri, to Ogden, and S
Lake City, Utah, Butte, Montana, and Portland, Oregon, have co
posed and still compose continuous through lines, operated h
moniously and, so far as affecting the shipping and travel
893 public, practically as if owned and operated by a single co
pany.

(12) He admits that in the year 1901 the Oregon Railroad and Navigation Company owned three steamships averaging about 1,350 net tons each, plying between Portland and San Francisco, by way of the Willamette and Columbia Rivers and the Pacific Ocean; and he avers that in the year 1904, the San Francisco and Portland Steamship Company, a corporation of the State of California, was organized, that all of its stock was acquired by the Oregon Railroad and Navigation Company and two of said steamships were transferred by charter to said San Francisco and Portland Steamship Company, and said San Francisco and Portland Steamship Company has since operated and now regularly operates two steamships, one of 2,317 tons and one of 1,836 tons, between San Francisco and Portland, via the Pacific Ocean and the Willamette and Columbia Rivers.

(13) He denies that the Oregon Railroad and Navigation Company ever operated a line of steamships or any steamships between Portland, Oregon, and Japan and China or other Asiatic ports.

(14) He admits that on or about the 14th day of January, 1901, the Portland and Asiatic Steamship Company was incorporated under the laws of the State of Oregon with a capital of $100,000, and that all of its capital stock was acquired and has ever since been and still is owned by said the Oregon Railroad and Navigation Company; and he admits that said Portland and Asiatic Steamship Company has sometimes operated steamships between Portland, Oregon, and Asiatic ports under charter; but he denies that said steamship company has ever owned or now owns any steamships or has ever operated or now operates any regular line of steamships.

(15) He denies that it has been or ever was practicable for the said steamships operated by the Portland and Asiatic Steamship Company to compete to any considerable or substantial extent with lines of steamships operated between San Francisco and Asiatic ports and Puget Sound and Asiatic ports for traffic originating in the interior of the United States or on the Atlantic seaboard.

(16) He admits that the Southern Pacific Company was, on January 1, 1901, and still is, the owner of a large majority of the capital stock of corporations which separately own and operate connecting links of a line of railroad extending from New Orleans, in the State of Louisiana, and Galveston, in the State of Texas, and through the States of Louisiana and Texas and the Territories of New Mexico and Arizona and the States of California and Oregon to Los Angeles and San Francisco and other points in California, and to Portland, Oregon.

(17) He admits that said Southern Pacific Company, in 190 owned and operated and has ever since owned and operated and now owns and operates lines of steamships between New York and New Orleans and New York and Galveston and between New Orleans and Havana which connect at New Orleans and Galveston with said rail lines.

(18) He admits that on the 1st day of January, 1901, the Southern Pacific Company owned, has ever since owned, and now owns all the capital stock of the Central Pacific Railway Company, which he avers is a corporation organized and existing under the laws of the State of Utah, and which acquired and now owns and operates all the railroads and other property formerly owned and operated by the Central Pacific Railroad Company of California and the Western Pacific Railroad Company, the corporations referred to in the aforesaid acts of Congress and by the California corporation into which they were merged by consolidation; and he also avers that said Southern Pacific Company on and prior to the 1st day of January, 190

and ever since that date has held, possessed, and operated

896 and still holds, possesses, and operates the railroads of said Central Pacific Railway Company, with their appurtenances under and by virtue of instruments of lease theretofore made and entered into.

(19) He admits that on January 1, 1901, said Southern Pacific Company owned, has ever since owned, and still owns 100,500 shares out of a total of 200,000 shares, of the capital stock of the Pacific Mail Steamship Company, and that said Pacific Mail Steamship Company during all said period has operated a line of steamships between San Francisco, the Hawaiian Islands, the Philippine Islands and Chinese and Japanese ports; and also a line of steamships between San Francisco and Panama; but he denies that the said lines of steamships, with the railroad of the Panama Railroad Company and steamships operating on the Atlantic Ocean, form a through line between New York and San Francisco via the Isthmus of Panama.

(20) He denies that the said rail lines from the Mississippi River to Portland, Oregon, by way of Los Angeles and San Francisco were at any time in competition with the said lines of the Union Pacific Railroad Company for the transportation of freight

897 between points in the Mississippi Valley and in the Eastern States or elsewhere and the Pacific Coast and points in Colorado and other interior States.

(21) He denies that the steamship lines of the Southern Pacific Company between New York and New Orleans and New York and Galveston, together with the rail lines in connection therewith, w

n active competition with the lines of the Union Pacific Railroad Company for a large amount of traffic originating on the Atlantic oast and in the Central States.

(22) He avers, on the contrary, that in the transcontinental lines f railroad reaching the Pacific coast south of Portland, Oregon, he Union Pacific Railroad was but a link about 1,000 miles in ength, and the Union Pacific Railroad Company merely an inter- ediate carrier without any power to make rates upon such traffic, nd that the defendant Southern Pacific Company, through its pos- ession and operation of the Central Pacific Railroad and its owner- hip of all of the stock of the Central Pacific Railway Company, ontrolled that portion of such transcontinental line extending from Ogden, Utah, to the Pacific Ocean at San Francisco and other points n California, and no rate between the Missouri River or points east thereof and the Pacific coast south of Portland or Asiatic 98 ports could be made by the Union Pacific Railroad Company except with the consent of and by agreement with said South- rn Pacific Company; and while the said Union Pacific Railroad Company and its constituent companies, to wit, The Oregon Short Line Railroad Company and The Oregon Railroad and Navigation Company, separately owned connecting lines of railroad operated s a single system as aforesaid, extending from the Missouri River to Portland, Oregon, and operated certain small steamships between Portland and San Francisco, as hereinbefore alleged, yet he avers hat such route via Portland was not only an impracticable route as competitor of said Southern Pacific Company, but any attempt of aid Union Pacific Railroad Company to use it as such competitor would have greatly injured the said Union Pacific Railroad Com- pany, because said Southern Pacific Company would thereupon have preferred the rivals of said Union Pacific Railroad Company in outing and interchanging traffic at Ogden, and the business in ton- nage and revenue which the said Union Pacific Railroad Company would thereby have lost would have greatly exceeded the total vol- me of business it could have secured over such impracticable route n competition with said Southern Pacific Company; so that the interest of said Union Pacific Railroad Company and the 99 companies formerly owning its lines always prevented it and them from using or attempting to use the said route via Port- and in competition with said Southern Pacific Company upon any usiness to or from the Pacific coast south of Portland or to or from Asiatic ports.

(23) He denies that the rail line of said Southern Pacific Com- pany between San Francisco and Portland was in active competition with the ships of the Oregon Railroad and Navigation Company

plying between San Francisco and Portland, and avers that competition between said lines was never practicable.

(24) He denies that ships operated by the Portland and Asiatic Steamship Company between Portland, Oregon, and Asiatic ports, in connection with the rail lines of the Union Pacific Railroad Company, or otherwise, were ever in competition with the Pacific Mail Steamship Company.

(25) He denies that the line of railroad composed of the tracks of the Oregon Short Line Railroad Company and the Oregon Railroad and Navigation Company between Ogden, Utah, and Portland, Oregon, were ever in competition with the lines of said Southern Pacific Company between said points or that such competition was ever practicable.

900 (26) He denies that any competition between the system of railroads and steamships owned and controlled by the Union Pacific Railroad Company and the system of railroads and steamships owned and controlled by the Southern Pacific Company, if any such competition ever existed, was substantial or that it included a large volume of traffic of any kind.

(27) He admits that the Atchison, Topeka and Santa Fe Railway Company has been for a period of more than eight years the owner and in control of lines of railroad as alleged in subdivision III of the petition, and admits that the lines of the Union Pacific Railroad Company, in connection with the lines of the Central Pacific Railway Company, operated by the said Southern Pacific Company, have been during such period and still are competitors of the Atchison, Topeka and Santa Fe Railway Company for a large volume of traffic to and from the Pacific coast.

(28) He admits that the lines of the Atchison, Topeka and Santa Fe Railway Company, since the completion of the same to San Francisco, California, about the year 1900, constituted the only line of transportation by rail from the Pacific coast, south of Portland, Oregon, to the Mississippi Valley and the East, except the lines

901 of the Southern Pacific Company to the Gulf of Mexico and the lines of the Central Pacific Railway Company operated by the Southern Pacific Company, in connection with the Union Pacific Railroad, until the completion of the San Pedro, Los Angeles and Salt Lake Railroad in the year 1905.

(29) He has no knowledge respecting the operation by the Atchison, Topeka and Santa Fe Railway Company of a line of steamships between San Diego, California, and Asiatic ports; but he denies that the traffic handled by any such steamship line, if any such line was ever operated, competitive between said Southern Pacific Company and the Atchison, Topeka and Santa Fe Railway Company and that

Union Pacific Railroad Company, was of great volume and embraced both passengers and freight.

(30) He admits that the Northern Pacific Railway Company, the Great Northern Railway Company, and the Chicago, Burlington and Quincy Railroad Company each owns and operates lines of railroad substantially as alleged in said petition; but he denies that the lines of said Northern Pacific Railway Company in and of themselves are competitive with the lines of the Union Pacific Railroad Company; and he admits that the lines of the Chicago, Burlington 92 and Quincy Railroad Company are competitive with the lines owned and operated by the Union Pacific Railroad Company to a limited extent and between certain points.

(31) He denies that the traffic between the Pacific coast, Asiatic ports, and points on and east of the Missouri and Mississippi Rivers is competitive between the lines of the Union Pacific Railroad Company and connections owned by it and the lines of said Northern Pacific Railway Company and Great Northern Railway Company and connections and steamship lines controlled by them.

(32) He admits that the defendant, The San Pedro, Los Angeles and Salt Lake Railroad Company is the owner of a line of railroad extending from San Pedro, on the Pacific Ocean, in the State of California, by way of Los Angeles, through the States of California and Nevada and into Utah, to Salt Lake City, and that most of said line is directly owned by said corporation, and the remainder of it is operated under lease or trackage contracts, and that the same constitutes a continuous line between San Pedro and Salt Lake City, Utah; and he denies that by said contract or otherwise there ever was any suppression or restriction of competition by said line with the lines of any defendant herein.

93 (33) He admits that the Denver and Rio Grande Railway Company owns a line of railroad from Salt Lake City, Utah, to Denver, Colorado, and that it is a competitor of defendant Union Pacific Railroad Company, but not of defendant Southern Pacific Company.

IV. (1) He denies that in the spring of 1901 or at any other time he and the defendants Schiff, Kahn, Stillman, and Union Pacific Railroad Company, or any of them, conspired to restrain trade and commerce among the several States and foreign countries carried on by said Union Pacific Railroad Company and said Southern Pacific Company or any other company, or to monopolize or attempt to monopolize any such trade and commerce, or to restrain or prevent competition among said railway systems or any other railway systems and said steamship lines or any other steamship lines in respect to any such commerce, or to deprive the public of the

facilities and advantages in the carrying on of such trade and com
merce through the independent competition, if any there was, o
said railway systems and steamship lines or other railway syste
or steamship lines; or that he and the said defendants or a
904 of them ever entered into a combination or conspiracy t
effect a virtual or substantial consolidation of said Unio
Pacific Railroad Company and any other transcontinental railw
companies or steamship companies, or to place restraint upon a
competitive commerce, if any such there was, carried on by such co
panies, or to monopolize or attempt to monopolize the same, or t
suppress any competition existing between any of said companies o
lines by the means alleged in the petition or otherwise.

(2) He admits that on or about the 20th day of February, 19
defendant Union Pacific Railroad Company acquired by purcha
from said firm of Kuhn, Loeb & Co. 750,000 shares of the capi
stock of said Southern Pacific Company of the aggregate par val
of $75,000,000 out of 1,978,399 shares of the aggregate par value
$197,839,900 then issued and outstanding, but he denies that the sa
stock was purchased or acquired in pursuance of any conspiracy o
combination or for any of the purposes alleged in said petition.

(3) He admits that thereafter, to wit, on or about the 26th day
February, 1902, defendant Union Pacific Railroad Company sol
and delivered the said 750,000 shares of the stock of said Southe
Pacific Company to defendant Oregon Short Line Railro
905 Company, which has ever since owned and still owns the sa

(4) He admits that thereafter, to wit, on or about the 3d
day of May, 1902, defendant Oregon Short Line Railroad Compa
acquired by purchase from said Kuhn, Loeb & Co. 150,000 additio
shares of stock of said Southern Pacific Company, which said Oreg
Short Line Railroad Company has ever since owned and still own
but he denies that the said additional shares were purchased o
acquired in pursuance of any conspiracy or combination or for a
of the purposes alleged in the petition.

(5) He admits that thereafter, when in 1904 defendant Southe
Pacific Company created an issue of preferred stock which it offer
to its stockholders for subscription pro rata at par, said Oreg
Short Line Railroad Company as the owner of 900,000 shares o
the common stock of said Southern Pacific Company exercised i
right and subscribed for and received and has ever since owned a
still owns 180,000 shares of the preferred stock of said Southe
Pacific Company; and that thereafter, in 1907, when said Southe
Pacific Company increased its said preferred stock by an additio
issue thereof which it offered to the holders of its outstandi
906 stock for subscription pro rata at par, said Oregon Short Li

Railroad Company as the owner of 1,080,000 shares of the stock of said Southern Pacific Company exercised its right and subscribed for and received 162,000 additional shares of the preferred stock of said Southern Pacific Company, and it has ever since owned and still owns the same, so that said Oregon Short Line Railroad Company now owns 900,000 shares of common stock and 342,000 shares of preferred stock, making a total of 1,242,000 shares of the capital stock of said Southern Pacific Company out of a total of 2,726,498 shares issued and outstanding.

(6) He denies that the stock of the Southern Pacific Company so acquired and owned by defendant Oregon Short Line Railroad Company is voted at the dictation and instance of the defendants Harriman, Stillman, Schiff, and Kahn, and that the directors of said company have been selected by the said Harriman, Stillman, Schiff, and Kahn.

(7) He denies that the Union Pacific Railroad Company or the Oregon Short Line Railroad Company controls or has ever controlled the management, operation, or business affairs of said Southern Pacific Company or exercised any control whatsoever over it, except such as may result from the voting upon the stock of
907 said Southern Pacific Company owned by said Oregon Short Line Railroad Company at meetings of the stockholders for the election of directors of said Southern Pacific Company.

(8) He denies that the said preferred stock was issued by said Southern Pacific Company, or that any of the common stock of said company was acquired by said Oregon Short Line Railroad Company, or the Union Pacific Railroad Company, in pursuance of any combination or conspiracy or for any of the purposes or with the intent alleged in said petition.

(9) He admits that at the annual meetings of the stockholders of the Southern Pacific Company since the stock was so acquired and owned by said Oregon Short Line Railroad Company such stock has constituted a majority of the shares represented at such meetings; and he admits that by voting upon the said shares, through its duly authorized agents and proxies, aided by the votes upon other shares owned by various other stockholders of said Southern Pacific Company, the defendant Oregon Short Line Railroad Company has been able to elect the directors of said Southern Pacific Company; but he avers that at no such meeting have any votes ever been cast by any stockholder against the persons so elected.

(10) He admits that since April 3, 1901, a majority of
908 the persons who have been directors of said Southern Pacific Company were at the same time directors of said Union Pacific Railroad Company.

(11) He admits that the stock of said Southern Pacific Compa not owned by defendant Oregon Short Line Railroad Company i owned by a large number of individuals, firms, and corporatio residing in many different places; but he denies that said stockholde are or will be unable to elect the directors of said Southern Paci Company, if they should deem it to their interest to do so, in op position to those voted for by said Oregon Short Line Railroad Com pany; and he avers that the reason why said stockholders have n heretofore elected the directors of said company is that they ha been satisfied with the directors nominated and elected by the agen and proxies of said Oregon Short Line Railroad Company in co junction with the agents and proxies of other stockholders.

(12) He admits that on the 3d day of April, 1901, he beca chairman of the executive committee, and on the 26th day of Se tember, 1901, he became the president of said Southern Pacific Co pany, and ever since has been and still is such chairman a president.

909 (13) He admits that the same person is the chief traf officer, the same person the chief operating officer, and t same person the chief accounting officer of both companies, and th said companies have jointly employed numerous commercial a other agents; but he avers that a very large majority of the agen officers, and employees of said companies are separate.

(14) He admits that since about the 26th day of October, 1904, t Pacific Mail Steamship Company, the Portland and Asiatic Stea ship Company, and the San Francisco and Portland Steamship Co pany have had the same officers and agents, but denies that there e was any competition between any of said steamship companies or a railroad or steamship lines.

(15) He denies each and every allegation of Subdivision IV of t petition, respecting the said Schiff, Kahn, Stillman, Union Pac Railroad Company, and this defendant, and any conspiracy or co bination among them for any of the purposes or with any of t intents alleged; and he denies each and every allegation of said S division IV of said petition not herein expressly admitted.

V. (1) He denies that he and the said Schiff, Kahn, Sti

910 man, Union Pacific Railroad, or any of them, in the spring 1901, or at any other time, caused the Union Pacific Railro Company to acquire a majority of the stock of the Northern Pac Railway Company pursuant to any conspiracy to restrain trade a commerce among the several States and with foreign nations, or t monopolize or attempt to monopolize such trade and commerce, or suppress any competition; and he denies all the allegations of S division V of the petition respecting any conspiracy or combinat

r that or any other purpose between any of the defendants to this it.

(2) He admits that in the year 1901 said Oregon Short Line Rail-ad Company purchased $37,023,000 par value of the common stock d $41,085,000 par value of the preferred stock of the Northern Pa-ic Railway Company, and that at the time of such purchase the tal stock of the Northern Pacific Railway Company issued and tstanding was of the aggregate par value of $155,000,000; but he nies that such purchase was in pursuance of any conspiracy or mbination or for any of the purposes alleged in the petition.

(3) He admits the incorporation of the Northern Securities Company, and also the retirement of the preferred stock by an additional issue of common stock of the Northern Pacific Railway Company, as alleged in said petition.

(4) He admits the sale and transfer of said stock to the Northern curities Company, and the receipt by said Oregon Short Line Rail-ad Company of $82,491,841 par value of the stock of said Northern curities Company represented by certificates issued in his name, d in the name of Winslow S. Pierce, who was at that time general unsel of defendant Union Pacific Railroad Company; and he ad-its that neither he nor the said Pierce had any personal interest in id shares.

(5) He admits the commencement of a suit by the United States America against said Northern Securities Company and others, d the decision of said suit as alleged in the petition.

(6) He admits the commencement thereafter of a suit by him and said Oregon Short Line Railroad Company, Winslow S. Pierce, d the Equitable Trust Company of New York, as alleged in the tition; and he admits that the relief sought by the complainants in id suit was denied by the decrees entered therein. But he avers at the said courts by said decrees approved the distribution by the Northern Securities Company of the stock of the Northern Pacific Railway Company and the Great Northern Railway Company complained of by defendant Oregon Short Line Rail-ad Company and its codefendants in said suit; and that as a re-lt of said distribution and of the approval of the same in said suit, e defendant Oregon Short Line Railroad Company during the year 04 received from the Northern Securities Company, as the interest d share of said Oregon Short Line Railroad Company of the assets distributed, 281,828 shares, being 18.18 per cent of the capital stock the Northern Pacific Railway Company, and 216,520 shares, being 82 per cent of the capital stock of the Great Northern Railway mpany; and that no doubt as to the right of said Oregon Short ne Railroad Company to so receive and hold the said shares was imated by any of the courts in such suit.

(7) He avers that defendant Oregon Short Line Railroad Company upon the final decision of said suit proceeded from time to time to sell the stock of the Northern Pacific Railway Company and of the Great Northern Railway Company, so received by it, as sales could be advantageously effected; and that by such sales the amount of such stock so held has been steadily reduced, so that at the date of the commencement of this suit the said Oregon Short Line
913 Railroad Company had sold all but 1,128 shares of the aggregate par value of $112,800 of the stock of the Northern Pacific Railway Company, and all but 4,041 shares of the aggregate par value of $404,100 of the stock of the Great Northern Railway Company which it had received from such distribution of the assets of said Northern Securities Company; and said Oregon Short Line Railroad Company, at the date of the commencement of this suit also owned 32,516 partially paid shares of the Northern Pacific Railway Company and 38,745 partially paid shares of the Great Northern Railway Company, for which it had subscribed upon increases of the stock of said companies since said distribution was made.

(8) He denies that he and the said Schiff, Kahn, Stillman, and Union Pacific Railroad Company, or any other persons associated with them, caused the said suit of Oregon Short Line Railroad Company, Winslow S. Pierce, the Equitable Trust Company of New York, and this defendant against Northern Securities Company to be prosecuted for the purpose of effectuating any conspiracy to restrain trade and commerce or to smother competition or monopolize any trade as in said petition alleged.

(9) He denies each and every allegation of said Subdivision V not herein expressly admitted.
914

VI. (1) He admits that prior to the year 1902 defendant William A. Clark, together with others, caused to be incorporated the defendant the San Pedro, Los Angeles and Salt Lake Railroad Company, but denies that it was for the purposes alleged in the petition, and refers to the articles of incorporation of the company for the purposes of its incorporation.

(2) He admits that on or about the 9th day of July, 1902, he entered into and executed with defendant William A. Clark an agreement in writing and that "Exhibit A" to the petition is a true copy of such agreement; but denies that said agreement was entered into for any of the purposes alleged in subdivision VI of the petition, or for any purpose not set forth or mentioned in said "Exhibit A," and he avers that in entering into and executing said contract he was acting for defendant Oregon Short Line Railroad Company and for no other corporation or person.

(3) He admits that pursuant to the said contract, "Exhibit A," other contracts between him and the said Clark and between
915 the Oregon Short Line Railroad Company and the San Pedro, Los Angeles and Salt Lake Railroad Company were made and entered into in June and July, 1903, but denies that any of such other contracts were of the character or for any of the purposes alleged in said subdivision VI of the petition.

(4) He admits that on or about the 7th day of June, 1903, a contract in writing bearing that date was made and entered into between him, as trustee for the defendant Oregon Short Line Railroad Company, and William A. Clark, individually and as trustee for his associates, and defendant The Farmers' Loan and Trust Company, of which "Exhibit B" annexed to the petition is a true copy, and that the stock of the defendant The San Pedro, Los Angeles and Salt Lake Railroad Company was deposited with and is still held by the Farmers' Loan and Trust Company, defendant, as stipulated and provided in and by said contract "Exhibit B."

(5) He denies each and every allegation of a conspiracy or combination by and between himself and the defendants Schiff, Kahn, Stillman, Clark, Union Pacific Railroad Company, and Oregon Short Line Railroad Company, or any of them, for any of the objects or purposes mentioned in Subdivision VI of the petition, or
916 for any other purpose; and he denies each and every allegation in Subdivision VI of the petition not herein in this subdivision expressly admitted; and he avers the facts to be as follows, viz:

(a) As early as 1888 the Oregon Short Line and Utah Northern Railway Company, the corporation which formerly owned the lines of railroad now owned by defendant Oregon Short Line Railroad Company, resolved to construct a line of railroad from Salt Lake City, Utah, to Los Angeles, California, with various branches; and in 1890 it had constructed and put into operation the said line from Salt Like City, via Sandy, Provo, Juab, and Leamington, to Milford, a distance of 221.9 miles, and various branches, all of which are more particularly described as "Parcel I" and "Parcel II" of article second in the contract "Exhibit A" to the petition herein. It had complied with all the laws of the Territory of Utah and the State of Nevada, necessary to entitle it to construct said line and had surveyed and located the said line and under due corporate action had prepared and filed maps and profiles of the same in the proper land offices in Utah and Nevada to entitle it to, and it had acquired the right of way for, said line across the lands of the United States in a general southwesterly direction from Milford
917 through Utah and across the State of Nevada to the boundary line between the States of Nevada and California. The

said maps had been approved under the rules of the Department of the Interior, and the Oregon Short Line and Utah Northern Railway Company had graded and completed the roadbed of said line ready for the rails from Milford to the boundary line between Utah and Nevada; and had practically completed the grading of said line from said boundary line southwesterly to Calientes, Nevada, a distance of 339 miles from Salt Lake City; and had completed the grading of a branch of said line from Calientes to Pioche, Nevada.

(b) On account of its inability at that time to procure the money necessary to complete the said line, said The Oregon Short Line and Utah Northern Railway Company discontinued and suspended the work of constructing said line in 1891. The company last named continued in such financial difficulty that on or about the 13th day of October, 1893, all of its railroad and other assets were placed in the hands of receivers, who administered the same until the sale thereof under decrees of the circuit courts of the United States for the districts of Utah and Idaho, on or about the 9th day of January,
918 1897, when they were bought by or for defendant Oregon Short Line Railroad Company.

(c) The defendant Oregon Short Line Railroad Company after its acquisition of the railroads and other assets of the Oregon Short Line and Utah Northern Railway Company, upon the foreclosure sale thereof as aforesaid, was until 1901 financially unable actively to resume the construction of said line from Milford to Los Angeles; and in its endeavor to provide for the completion of said line of railroad it conveyed that portion of said line, including the completed grade from Milford to the boundary line between the States of Utah and Nevada, to the Utah and Pacific Railroad Company, a corporation of the State of Utah, all the capital stock of which was owned by defendant Oregon Short Line Railroad Company, and conveyed that portion of said line from the boundary line between Utah and Nevada to the boundary line between Nevada and California, including the partially constructed grade of the main line from the Utah boundary line to Calientes, and of the branch line from Calientes to Pioche, to the Utah, Nevada and California Railroad Company, a corporation of the State of Nevada, all of the capital stock of which was owned by defendant Oregon Short Line Railroad Company; and to construct, complete, and own that portion
919 of said line that was to be situated in the State of California. The defendant Oregon Short Line Railroad Company caused to be incorporated and acquired all the capital stock of the Utah, Nevada & California Railroad Company in California.

(d) Early in 1901 said Utah & Pacific Railroad Company and said Utah, Nevada & California Railroad Company, aided and assisted

by defendant Oregon Short Line Railroad Company, actively resumed the construction of the said line of railroad from Milford to Los Angeles, and to that end put a large force of men at work laying track upon and repairing where necessary the grades which had been constructed as aforesaid from Milford to Calientes, and in doing other work necessary in the construction of the said line to Los Angeles.

(e) On or about the date when the construction of said line was resumed in 1901, as aforesaid, defendant The San Pedro, Los Angeles and Salt Lake Railroad Company was incorporated under the laws of the State of Utah with power to build or acquire railroads in that State, but it did not acquire under the laws of Nevada the right to build or acquire railroads in that State or acquire the right under the laws of California to build or acquire any railroad north or east of Riverside until long after that date. It had acquired a line of railroad of inferior character extending from San Pedro to Los Angeles, a distance of twenty-four miles, and branches from Los Angeles to Pasadena and Glendale, a distance of about twenty miles, which were the only railroads owned or controlled by said The San Pedro, Los Angeles and Salt Lake Railroad Company when the construction of the said line from Milford to Los Angeles was resumed by defendant Oregon Short Line Railroad Company and the companies controlled by it as aforesaid. Said The San Pedro, Los Angeles and Salt Lake Railroad Company at that time controlled, through the ownership of stock or otherwise, the Utah and California Railway Company, a corporation of the State of Utah, authorized to build a railroad in the State of Utah, but not in the States of Nevada or California.

(f) Said The San Pedro, Los Angeles and Salt Lake Railroad Company had not at said time located any line of railroad or acquired any rights of way or done any work of constructing a railroad easterly or northerly of Riverside, California, a distance of sixty miles from Los Angeles, and said Utah and California Railway Company had not at said time located any line of railroad or acquired any rights of way or done any work of constructing a railway.

(g) Soon after the incorporation of said The San Pedro, Los Angeles and Salt Lake Railroad Company, it attempted to seize and appropriate to its own use the right of way across the State of Nevada and the partially completed grade between Calientes and the Utah boundary line, and between Calientes and Pioche, and, to that end, located and constructed by the Utah Northern and Oregon Short Line Railway Company, as hereinbefore alleged, and then owned by the Utah, Nevada and California Railroad Company, and,

to that end, said The San Pedro, Los Angeles and Salt Lake Railroad Company caused the said line to be surveyed, and prepared maps and profiles adopting the same as its own, and attempted to file the same in the local land office of the United States in Nevada for the purpose of securing the right of way, and also acquired a pretended tax title thereto from Lincoln County, Nevada, and also attempted by its laborers and other employees to take forcible possession of the same.

(h) Thereupon and in order to protect its possession of and title to said grade and right of way across the State of Nevada, said Utah, Nevada and California Railroad Company commenced in the circuit court of the United States for the district of Nevada a suit
922 against said The San Pedro, Los Angeles and Salt Lake Railroad Company and said Utah and California Railroad Company and others, and, upon the hearing of said cause, an injunction was issued restraining and enjoining the said defendants from interfering with the possession and rights of said complainant, and said Utah, Nevada and California Railroad Company in a suit against said The San Pedro, Los Angeles and Salt Lake Railroad Company and others in Lincoln County, Nevada, procured a decree canceling and setting aside the said pretended tax titles of the defendant The San Pedro, Los Angeles and Salt Lake Railroad Company; and the contests in the land offices of the United States between said Utah, Nevada and California Railroad Company and said Utah and California Railway Company involving the said right of way was finally decided by the Secretary of the Interior in favor of the said Utah, Nevada and California Railroad Company.

(i) As a result of such decision rendered prior to the execution of "Exhibit A" to the petition herein on July 9, 1902, the defendant Oregon Short Line Railroad Company and the said Utah and Pacific Railroad Company and said Utah, Nevada and California Railroad Company, controlled by it through the ownership of stock
923 established their right to the partially completed railroad and the located line and right of way therefor from Salt Lake City, Utah, to the boundary line between the States of Nevada and California, and were rapidly proceeding with the completion of said line to Los Angeles; while the said San Pedro, Los Angeles and Salt Lake Railroad Company had in operation only the aforesaid line from San Pedro to Los Angeles and branches from Los Angeles to Pasadena and Glendale, and had partially constructed an extension eastwardly for a distance of about sixty miles.

(j) And this defendant is informed and believes, and upon such information and belief avers, that defendant The San Pedro, Los Angeles and Salt Lake Railroad Company would never have under-

aken the construction of a line of railroad from Los Angeles to Salt Lake City except for its expectation and belief, and the expectation and belief of the defendant Clark, that it could acquire, without compensation, the right of way and partially constructed line located and constructed as aforesaid by the Oregon Short Line and Utah Northern Railway Company from Milford through Utah and across the State of Nevada to the California boundary line; and that defendant Oregon Short Line Railroad Company would not extend the said line by construction from Milford to Los Angeles; and
24 that when it appeared from the contests, suits, and decisions aforesaid that the said right of way and partially completed rade could not thus be acquired, and that said Oregon Short Line Railrod Company would construct and extend its own line from Milford, Utah, to Los Angeles, California, said The San Pedro, Los Angeles and Salt Lake Railroad Company and the said Clark would ave abandoned the previously conceived purposes and intention o construct and establish a line of railroad from Los Angeles, California, to Salt Lake City, Utah, but for their ability to negotiate and xecute the contract, "Exhibit A" to the petition herein, providing or the construction and establishment of such a line under the erms and conditions in said contract set forth.

(6) He denies that the said "Exhibit A" to the petition, or that nything done in executing and carrying out the same, has suppressed, restrained, or in any manner restricted any commerce among e several States or with foreign countries.

(7) He denies that the aforesaid act of Congress approved July 2, 890, or any other law of the United States, was intended to or could nstitutionally prohibit the making or carrying out of such agreement and contract, and avers that the construction of rail-
5 roads in the States of Utah, Nevada, and California by the corporations of said States, respectively, or by corporations of her States authorized by the said States to exercise their corporate wers therein, and all agreements relating to the construction or andonment of the construction of such railroads, are matters olly to be dealt with by the laws of the States, respectively, and y law of Congress intended or construed to prohibit or regulate in any manner interfere with such contracts, corporate powers, d matters is in excess of the powers of Congress under the Contution of the United States and is therefore void.

He avers that although prosecuted diligently after the making of d contract, "Exhibit A" to the petition, the work of constructing said railroad from Milford to Los Angeles was not completed d the said line opened for business until the first day of May, 1905; d the defendants avers that on the 9th day of July, 1902, when

the said agreement was made and entered into, there was not the
and, from the nature of the work to be done, there could not for se
eral years be, any competition of any sort between the parties to th
said agreement in transportation, to be suppressed or in any wa
restrained; and the possibility or probability of any suc
926 competition and of any restraint or restriction thereon was to
remote and contingent to be prohibited by or to come within
the provisions of the said act of Congress, approved July 2, 1890.

VII. (1) He denies that, pursuant to any conspiracy to restrai
trade and commerce among the several States or with foreign na
tions, or to monopolize or attempt to monopolize any such trade an
commerce, or to restrain or prevent competition among any of sai
railway systems, he and the defendants, Schiff, Kahn, Stillman
Rogers, and Frick, or any of them, in the year 1904, or at any othe
time, made large purchases of stock of the Atchison, Topeka and
Santa Fe Railway Company, aggregating $30,000,000 par value o
said stock or any other amount; and he denies that he or any of th
other defendants at any time demanded of any officials of the said
The Atchison, Topeka and Santa Fe Railway Company that any o
the defendants herein should be elected directors of the Atchison
Topeka and Santa Fe Railway Company.

(2) He admits that in the year 1904 the defendants, Frick and
Rogers, were elected directors of the Atchison, Topeka and
927 Santa Fe Railway Company, and have since served and are
still serving as such directors; but he denies that they were
elected for any of the reasons alleged in Subdivision VII of the
petition herein, and denies that by means of such election the de
fendant Union Pacific Railroad Company has had knowledge of the
affairs and business of said The Atchison, Topeka and Santa Fe
Railway Company.

(3) He admits that in July, 1906, defendant Oregon Short Line
Railroad Company purchased, and has ever since owned, $10,000,00
par value of the capital stock of said The Atchison, Topeka and Santa
Fe Railway Company out of a total issue of preferred and common
stock of said company outstanding of the aggregate par value of
$216,199,530, but he denies that such purchase was for any of the
purposes alleged in said petition.

(4) He denies that he or any associates of his or defendant Union
Pacific Railroad Company, or all of them, have any control, partial
or otherwise, of said The Atchison, Topeka and Santa Fe Railway
Company.

(5) He denies that competition between the systems of railway
controlled by defendant Union Pacific Railroad Company and by

said The Atchison, Topeka and Santa Fe Railway Company has to any extent been eliminated.

(6) He denies that he or any other persons alleged in said petition to be "conspirators" have caused defendant Southern Pacific Company or the Atchison, Topeka and Santa Fe Railway Company to abandon any extensions, improvements, and additions to their lines in California or elsewhere.

(7) He admits that certain lines of railroad surveyed and partially constructed within the State of California formerly owned by corporations whose stock was owned by the Southern Pacific Company, and that certain other lines of railroad surveyed and partially constructed within the State of California formerly owned by corporations whose capital stock was owned by the Atchison, Topeka and Santa Fe Railway Company were conveyed to a company incorporated under the laws of the State of California under the name, style, and title of "Northwestern Pacific Railway Company," and that one-half of the capital stock of the last-named corporation is owned by the Southern Pacific Company and the other half by the Atchison, Topeka and Santa Fe Railway Company; but he avers that all of the corporations which owned and conveyed said lines, and the said Northwestern Pacific Railroad Company itself, were incorporated under the laws of the State of California, and that all such sales and consolidations were made and effected under and by authority of the laws of said State.

(8) He denies that the lines of railroad of the Atchison, Topeka and Santa Fe Railway Company are operated in harmony with the lines of said Union Pacific Railroad Company or said Southern Pacific Company under agreements and understandings as to rates and divisions of business and that competition between such lines has been eliminated or in any wise restricted.

(9) He denies that any of the acts or transactions alleged in said petition were committed or occurred in pursuance of any conspiracy, combination, or contract to restrain trade or commerce among the several States and with foreign countries; or in pursuance of any conspiracy or combination for any purpose.

VIII. And this defendant denies all and all manner of unlawful combination and confederacy wherewith he is by the said petition charged, without this, that if there is any other matter, cause, or thing in the petition contained material or necessary for this defendant to make answer unto, and not herein or hereby well and sufficiently answered, confessed, traversed, and avoided or denied, the same is not true to the knowledge or belief of this defendant; all of which matters and things this defendant is ready and willing to aver, maintain, and prove as this honorable court shall

direct, and humbly prays to be hence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

EDWARD H. HARRIMAN,
Defendant.

By P. L. WILLIAMS,
His solicitor.

ROBERT S. LOVETT, *of counsel.*

931 No. 993. United States Circuit Court, District of Utah. In equity.

The United States of America, complainant,
v.
Union Pacific Railroad Company et al., defendants.

Answer of defendant Southern Pacific Company. (Filed April 1908.)

932 United States Circuit Court, District of Utah. No. 993. In equity.

The United States of America, complainant, against Union Pacific Railroad Company; Oregon Short Line Railroad Company; The Oregon Railroad and Navigation Company; The San Pedro, Los Angeles and Salt Lake Railroad Company; The Atchison, Topeka and Santa Fe Railway Company; Southern Pacific Company; Northern Pacific Railway Company; The Great Northern Railway Company; The Farmers' Loan and Trust Company; Edward H. Harriman; Jacob H. Schiff; Otto H. Kahn; James Stillman; Henry H. Rogers; Henry C. Frick; and William A. Clark, defendants.

933 The separate answer of the defendant Southern Pacific Company to the original petition of the United States of America.

This defendant now, and at all times hereafter, saving to itself all manner of benefit and advantage of exception which can or may be taken to the many errors, uncertainties, and other imperfections in the complainant's petition contained, or to so much and such parts thereof as this defendant is advised, it is material or necessary for it to make answer unto, answering, says:

(1) It admits that it and the other corporations mentioned in Subdivision I of the petition were at the times alleged in said petition and are now common carriers employed in the transportation

freight and passengers within and among those States and Territories of the United States in and through which the transportation lines owned and operated by them, respectively, are located, and not further or otherwise, but were and are to that extent engaged in trade and commerce among the several States and with foreign countries.

(2) It has no knowledge respecting the matters alleged in Subdivision II of the petition.

(3) It admits that defendant Union Pacific Railroad Company since January 1, 1901, has owned and operated and now owns and operates lines of railroad extending from Council Bluffs, Iowa, to Ogden, Utah; from Kansas City, Missouri, to Denver, Colorado; from Denver to Cheyenne, Wyoming; and from Julesburg to La Salle, Colorado; and it admits that said lines of railroad, except the line from Julesburg to La Salle, were constructed by the corporations named in the petition with the aid in lands and bonds of the United States granted by the acts of Congress approved July 1, 1862 (12 Stat., 479), and July 2, 1864 (13 Stat., 356), and the acts amendatory of and supplementary to the said acts.

(4) It is without knowledge of the consolidation of the corporations formerly owning the above-named lines into "The Union Pacific Railway Company," but is informed and believes that such consolidation was effected on January 24, 1880.

(5) It admits that the Central Pacific Railroad Company of California was organized under the laws of the State of California, and admits that the Western Pacific Railroad Company was also organized under the laws of said State. It admits that the said Central Pacific Railroad Company of California and the said Western Pacific Railroad Company were consolidated into and under the name, style, and title of "Central Pacific Railroad Company." It admits that said Western Pacific Railroad Company constructed a line of railroad from San Francisco to Sacramento, California, and that said Central Pacific Railroad Company of California commenced the construction, and after the consolidation aforesaid the corporation formed by such consolidation completed the said railroad from Sacramento, California, to Ogden, Utah, where it connects with the main line of the Union Pacific Railroad Company.

(6) It refers to the said acts of Congress approved July 1, 1862 (12 Stat., 489), July 2, 1864 (13 Stat., 356), and June 20, 1874 (18 Stat., 111), for answer to the allegations of the petition respecting the aid granted in bonds and land to, and the duties and responsibilities imposed by said acts upon, the corporations aided and authorized by said acts to construct the railroads therein mentioned and provided for, and to the several acts and joint resolutions of Con-

gress amendatory of and supplementary to the aforesaid acts (
Stat., 538; 13 Stat., 504; 13 Stat., 573; 14 Stat., 355; 14 Stat.,
14 Stat., 79; 14 Stat., 290; 15 Stat., 39; 15 Stat., 79; 15 St.
936 324; 15 Stat., 348; 16 Stat., 56; 16 Stat., 121; 16 Stat.,
17 Stat., 508; 18 Stat., 200; 18 Stat., 453; 20 Stat., 56; 20 St.
169; 24 Stat., 488; 25 Stat., 382; 25 Stat., 439.)

(7) It admits that the defendants Oregon Short Line Railr
Company and The Oregon Railroad and Navigation Company o
and operate the lines of railroad alleged in said petition; and it
mits that they and said Union Pacific Railroad Company, resp
tively, operate important branch lines of railroad.

(8) It is without knowledge respecting the control of the Ore
Short Line Railroad Company and the Oregon Railroad and Na
gation Company by the Union Pacific Railroad Company.

(9) It is without knowledge of the ownership by the Oregon R
road and Navigation Company in 1901 or at any other time of
steamships, or of the ownership of stock of the Portland and Asi
Steamship Company, as alleged in the petition.

(10) It admits that it was on January 1, 1901, and still is
owner of a large majority of the capital stock of corporations wh
separately own and operate connecting links of a line of r
937 road extending from New Orleans, in the State of Louisi
and Galveston, in the State of Texas, and through the St
of Louisiana and Texas and the Territories of New Mexico and A
zona, and the States of California and Oregon to Los Angeles
San Francisco and other points in California, and to Portl
Oregon.

(11) It admits that in 1901 it also owned and operated, has
since owned and operated and now owns and operates lines of st
ships between New York and New Orleans, New York and Gal
ton, and between New Orleans and Havana, which connect at N
Orleans and Galveston with the said rail lines.

(12) It admits that on January 1, 1901, it owned, has ever
owned and now owns all the capital stock of the Central Pa
Railway Company, a corporation organized and existing under
laws of the State of Utah, and avers that said Central Pacific R
way Company succeeded to the ownership of and now owns the
road from San Francisco to Ogden with the branch lines forme
owned by the Central Pacific Railroad Company as originally e
ing and as constituted by the consolidation aforesaid with the
Western Pacific Railroad Company; but it avers that this defend
on and prior to the 1st day of January, 1901, and ever since
date has held, possessed, and operated, and still ho
938 possesses, and operates all the railroads of said Central

ific Railway Company with their appurtenances under and by virtue f instruments of lease theretofore made and entered into.

(13) It avers that said Central Pacific Railroad Company, as riginally existing and as constituted by the consolidation aforesaid ith the Western Pacific Railroad Company, was unable to pay its ndebtedness to the Government of the United States, arising from he issue of Government bonds under the provisions of the aforesaid cts of Congress to aid in the construction of said railroad from San rancisco to Ogden, at the maturity of said indebetdness, and was lso unable to pay its indebtedness evidenced by its own bonds, ag- regating large amounts, as such indebtedness matured during and rior to the year 1899.

(14) It avers that the said Central Pacific Railway Company, organ- ed as aforesaid under the laws of the State of Utah, acquired by pur- hase from said Central Pacific Railroad Company, on or about the 0th day of July, 1899, the railroad constructed as aforesaid from San rancisco to a connection with the Union Pacific Railroad at Ogden, with its various branches; and that the power of said Central Pacific Railroad Company to make such sale, and of the said Central Pacific Railway Company to make such purchase, as conferred upon the said corporations, respectively, by the laws f the States of Utah, Nevada, and California.

(15) It avers that such purchase and sale was made for the pur- se of paying the indebtedness of said Central Pacific Railroad ompany of the United States of America and to the holders of its wn bonds; that all such indebtedness was thereby paid and dis- harged in full, and that the incorporation and organization of said entral Pacific Railway Company and the said purchase and ale and the payment of all such indebtedness were caused and rought about by this defendant, and that the means for paying nd satisfying all such indebtedness and rehabilitating the railroads f the said Central Pacific Railway Company were provided and rocured by or at the instance of this defendant.

(16) It admits that on January 1, 1901, it owned, has ever since wned, and still owns 100,500 shares out of a total of 200,000 shares f the capital stock of the Pacific Mail Steamship Company, and hat said Pacific Mail Steamship Company, during all said period, has operated a line of steamships between San Francisco, the Hawaiian Islands, the Philippine Islands, and Chinese and Japanese ports, and also a line of steamships between San rancisco and Panama; but it denies that the said line of steam- hips, with the Panama Railroad Company and steamships oper- ting in the Atlantic Ocean, forms a through line between New ork and San Francisco via the Isthmus of Panama.

(17) It denies that the said rail lines from the Mississippi River to Portland, Oregon, by way of Los Angeles and San Francisco, were at any time in competition with the lines of the Union Pacific Railroad Company for the transportation of freight from points in the Mississippi Valley and in the Eastern States or elsewhere to Pacific coast points and points in Colorado and other interior States; and it denies that the steamship lines of this defendant between New York and New Orleans and between New York and Galveston, together with rail lines in connection therewith, were in active competition with the lines of the Union Pacific Railroad Company for a large amount of traffic originating on the Atlantic coast and in the Central States.

(18) It avers, on the contrary, that in the transcontinental lines of railroad reaching the Pacific coast south of Portland, Oregon,
941 the Union Pacific Railroad was but a link about 1,000 miles in length, and the defendant Union Pacific Railroad Company merely an intermediate carrier, without any power to make rates upon such traffic; and that this defendant through its possession and operation of the Central Pacific Railroad, under lease as aforesaid, and by its ownership of all the stock of the Central Pacific Railway Company, controlled that portion of such transcontinental line about 850 miles in length extending from Ogden, Utah, to the Pacific Ocean at San Francisco and other points in California, and no rate between the Missouri River or points east thereof and the Pacific coast south of Portland, or Asiatic ports, could be made by defendant Union Pacific Railroad Company, except with the consent of and by agreement with this defendant; and while the defendants Union Pacific Railroad Company, the Oregon Short Line Railroad Company, and the Oregon Railroad and Navigation Company separately owned connecting lines of railroad operated as a single system extending from the Missouri River to Portland, Oregon, and operated certain small steamships between Portland and San Francisco, yet this defendant avers that such route via Portland was not only an impracticable route as a competitor of this defendant, but any attempt of said
942 defendants to use it as such competitor would have greatly injured defendant Union Pacific Railroad Company, because this defendant would thereupon have preferred the rivals of said Union Pacific Railroad Company in routing and interchanging traffic at Ogden, and the business in tonnage and revenue which defendant Union Pacific Railroad Company would thereby have lost would have greatly exceeded the total volume of any business it could have secured over such impracticable route in competition with this defendant, so that the interest of defendant Union Pacific Railroad Compay and the companies formerly owning its lines always prevented it and them from using or attempting to use it

said route via Portland in competition with this defendant upon any business to or from Pacific coast points south of Portland or to or from Asiatic ports.

(19) It denies that its rail line between San Francisco and Portland was in active competition with any ships of the Oregon Railroad and Navigation Company between San Francisco and Portland, and avers that competition between said lines was never practicable.

(20) It denies that the ships operated by the Portland and Asiatic Steamship Company in connection with the rail lines of the Union Pacific Railroad Company, or otherwise, between Portland, Oregon, and Asiatic ports, were ever in competition with the Pacific Mail Steamship Company.

(21) It denies that the line of railroad composed of the tracks of the Oregon Short Line Railroad Company and the Oregon Railroad and Navigation Company between Ogden and Portland were ever in active competition with the lines of this defendant between said points.

(22) It denies that any competition between the system of railroads and steamships owned and controlled by this defendant and the system of railroads and any steamships owned or controlled by the Union Pacific Railroad Company, if any such competition ever existed, was substantial or that it included a large volume of traffic of any kind.

(23) It admits that the Atchison, Topeka and Santa Fe Railway Company for a period of more than eight years has been the owner and in control of the lines of railroad alleged in the petition, and that during such period it has been, and still is, competing with said Union Pacific Railroad Company and this defendant for a large volume of traffic to and from the Pacific coast and the Orient, and has been competing with the defendant Union Pacific Railroad Company between the Missouri River and various points in Kansas, Colorado, and other States.

(24) It admits that the line of the Atchison, Topeka and Santa Fe Railway Company, since the completion of the same to San Francisco about the year 1900, constituted the only line of transportation by rail from the Pacific coast south of Portland, Oregon, to the Mississippi Valley and the East, except the lines of this defendant to the Gulf and the lines of the Central Pacific Railway Company operated by this defendant in connection with the Union Pacific Railroad Company until the completion of the San Pedro, Los Angeles and Salt Lake Railroad Company in the year 1905.

(25) It has no knowledge of the operation by the Atchison, Topeka and Santa Fe Railway Company of a line of steamships between San Diego, California, and Asiatic ports, but it denies that the traffic

handled by any such steamship line, if any such line was ever operated, competitive between this defendant and the Atchison, Topeka and Santa Fe Railway Company was of great volume and embraced both passengers and freight.

(26) It admits that the Northern Pacific Railway Company, the Great Northern Railway Company, and the Chicago, Burlington and Quincy Railroad Company is each the owner of the lines of railroad described in the petition, but it has no knowledge of the ownership of the stock of the Chicago, Burlington and Quincy Railroad Company or of any competition between any of said lines and the lines of the Union Pacific Railroad Company.

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(27) It admits that the San Pedro, Los Angeles and Salt Lake Railroad Company operates a line of railroad extending from San Pedro on the Pacific Ocean in the State of California by way of Los Angeles through the States of California, Nevada, and Utah to Salt Lake City, Utah, but it is without knowledge of the character of the title of said company to said railroad, and it admits that said company as the owner of said railroad with its connections is a competitor of this defendant between certain points in southern California.

(28) This defendant admits that on or about the 20th day of February, 1901, defendant Union Pacific Railroad Company acquired 750,000 shares of the capital stock of this defendant of the aggregate par value of $75,000,000 out of a total of 1,978,399 shares of the aggregate par value of $197,839,900 then issued and outstanding, and it admits that thereafter and on or about the 26th day of February, 1902, said Union Pacific Railroad Company sold said 750,000 shares to defendant Oregon Short Line Railroad Company, which has ever since owned and still owns the same.

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(29) It admits that thereafter on or about the 31st day of May, 1902, defendant Oregon Short Line Railroad Company acquired 150,000 additional shares of stock of this defendant, which it has ever since owned and still owns.

(30) It admits that when in 1904 this defendant created an issue of preferred stock which it offered to its stockholders for subscription *pro rata* at par, said Oregon Short Line Railroad Company, as the owner of 900,000 shares of the common stock of this defendant exercised its right and subscribed for and received and has ever since owned and still owns 180,000 shares of the preferred stock of this defendant; and that thereafter when in 1907 this defendant increased its preferred stock by an additional issue thereof which it offered to the holders of its outstanding stock for subscription *pro rata* at par, said Oregon Short Line Railroad Company, as the owner of 1,080,000 shares of the stock of this defendant, exercised its right and subscribed and received 162,000 additional shares of the preferred stock

f this defendant, and has ever since owned and still owns the same, so that said Oregon Short Line Railroad Company now owns 47 900,000 shares of the common stock, and 342,000 shares of the preferred stock, making a total of 1,242,000 shares out of a otal of 2,726,498 shares of the capital stock of this defendant issued nd outstanding.

(31) It denies that defendants Harriman, Schiff, Kahn, Stillman, r Union Pacific Railroad Company caused the said preferred stock be issued by this defendant.

(32) It admits that the stock of this defendant not owned by said regon Short Line Railroad Company is owned by a large number f individuals, firms, and corporations residing in many different laces, but it denies that such stockholders, other than defendant regon Short Line Railroad Company, are or will be unable to elect e directors of this defendant if they should deem it to their interest do so in opposition to those voted for by said Oregon Short Line ailroad Company.

(33) It admits that at the annual meetings of this defendant, held nce the stock was so acquired and owned by said Oregon Short Line ailroad Company, such stock has constituted a majority of the ares represented at such meetings, and that by voting upon the said shares through its duly authorized agents and proxies, 8 aided by the votes upon other shares owned by various other stockholders of this defendant, said Oregon Short Line Rail- ad Company, has been able to elect the directors of this defendant, t at no such meetings have any votes ever been cast by any such ckholder against the persons so elected.

(34) It denies that the Union Pacific Railroad Company or the regon Short Line Railroad Company controls or has ever controlled e management, operation, or business affairs of this defendant, or ercised any control whatsoever over it, except such as may result m the voting upon the stock of this defendant owned by said Ore- n Short Line Railroad Company, as aforesaid, at meetings for the ction of directors of this defendant.

(35) It admits that since April 3, 1901, a majority of the persons o have been elected directors of this defendant, have been at the ne time directors of the defendant Union Pacific Railroad Com- ny.

(36) It admits that defendant Harriman on April 3, 1901, became airman of the executive committee and on the 26th day of Septem- , 1901, became the president of this defendant and ever since has been and still is such chairman and president.

) (37) It admits that the same person is the chief traffic officer, the same person the chief operating officer, and the ne person the chief accounting officer of both companies; and that

said companies have jointly employed numerous commercial and other agents, but it avers that a large majority of the officers, agents, and employees of said companies are separate.

(38) It denies that through the purchase and ownership of said stock by the Union Pacific Railroad Company or by the Oregon Short Line Railroad Company, or from any other cause, there has been any suppression or restraint of competition in the transportation of commerce among the several States or with foreign countries, or any monopoly in the transportation of any such commerce; and it denies any knowledge of any conspiracy, combination, or contract in restraint of trade or commerce among the several States or between said States and foreign countries, or to suppress or restrain competition therein, or to monopolize or attempt to monopolize transportation of any such commerce.

(39) It is without knowledge respecting any of the other matters alleged in Subdivision IV of the said petition.

(40) It is also without knowledge of any of the matters
950 alleged in Subdivision V of the petition.

(41) It admits that there is a competition between the San Pedro, Los Angeles, and Salt Lake Railroad Company and this defendant between certain points in California.

(42) It is without knowledge of any of the other matters alleged in Subdivision VI of the petition.

(43) This defendant admits that, pursuant to an agreement with the Atchison, Topeka and Santa Fe Railway Company, a corporation was organized under the laws of the State of California under the name, style, and title of the "Northwestern Pacific Railway Company," and that certain other corporations of the State of California whose capital stock was owned by this defendant and certain other corporations of the State of California whose capital stock was owned by the Atchison, Topeka and Santa Fe Railway Company were consolidated with and merged into said Northwestern Pacific Railway Company under the name, style, and title of "Northwestern Pacific Railroad Company," and that the capital stock of said Northwestern Pacific Railroad Company is owned equally by this defendant and by the Atchison, Topeka and Santa Fe Railway Company; but it avers that all of the said corporations merged and con-
951 solidated as aforesaid were incorporated under the laws of the State of California; and the said lines of railroad were situated wholly within the State of California, and the said consolidation and merger was and is authorized and provided for by the laws of said State.

(44) It denies all of the allegations of Subdivision VII of the petition in reference to any conspiracy, combination, or contract to restrain commerce among the several States or with foreign countries

or to restrain competition in any such commerce or to monopolize or attempt to monopolize transportation in any such commerce.

(45) This defendant is without knowledge of any of the other matters alleged in Subdivision VII of the petition.

(46) And this defendant denies all and all manner of unlawful combination and confederacy wherewith they are by the said petition charged, without this, that if there is any other matter, cause, or thing in the petition contained material or necessary for this defendant to make answer unto, and not herein or hereby well and sufficiently answered, confessed, traversed, and avoided or denied, the same is not true to the knowledge or belief of this defendant; all of which matters and things this defendant is ready and willing to aver, maintain, and prove as this honorable court shall direct,

952 and humbly prays to be hence dismissed with its reasonable costs and charges in its behalf most wrongfully sustained.

SOUTHERN PACIFIC COMPANY,
By P. L. WILLIAMS, *Its Solicitor.*

ROBERT S. LOVETT, *Of Counsel.*

953 No. 993. United States Circuit Court, District of Utah.
In equity.

The United States of America, complainant, vs. Union Pacific Railroad Company et al., defendants.

The joint and several answer of defendants Union Pacific Railroad Company, Oregon Short Line Railroad Company, and the Oregon Railroad and Navigation Company. (Filed April 6, 1908.)

954 United States Circuit Court, District of Utah. No. 993.
In equity.

The United States of America, complainant, vs. Union Pacific Railroad Company, Oregon Short Line Railroad Company, The Oregon Railroad and Navigation Company, The San Pedro, Los Angeles and Salt Lake Railroad Company, The Atchison, Topeka and Santa Fe Railway Company, Southern Pacific Company, Northern Pacific Railway Company, The Great Northern Railway Company, The Farmers' Loan and Trust Company, Edward H. Harriman, Jacob H. Schiff, Otto H. Kahn, James Stillman, Henry H. Rogers, Henry C. Frick, and William A. Clark, defendants.

955 The joint and several answer of the defendants, Union Pacific Railroad Company, Oregon Short Line Railroad Company, and The Oregon Railroad and Navigation Company to the original petition of the United States of America.

These defendants, now and at all times hereafter saving to themselves all manner of benefit and advantage of exception which can

or may be taken to the many errors, uncertainties, and other imperfections in the complainant's petition contained or to so much and such parts thereof as these defendants are advised it is material or necessary for them to make answer unto, answering say:

I. They admit that the defendants, The San Pedro, Los Angeles and Salt Lake Railroad Company, The Atchison, Topeka and Santa Fe Railway Company, Southern Pacific Company, Northern Pacific Railway Company, The Great Northern Railway Company, and these defendants were at the times alleged in the petition and are now common carriers employed in the transportation of freight and passengers within and among those States and Territories of the United States in and through which the transportation lines owned and operated by them, respectively, are located, and not further or otherwise, and were and are to that extent, but to that extent only, engaged in trade and commerce among the several States and with foreign nations.

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II. (1) They deny that from January 1, 1901, or at any time, the defendants, Edward H. Harriman, Jacob H. Schiff, Otto H. Kahn and James Stillman, with certain other persons who have joined with them from time to time, including the defendants, Henry H. Rogers and Henry C. Frick, have owned or controlled a majority of the capital stock of the Union Pacific Railroad Company.

(2) They admit that the defendant Edward H. Harriman on the 23d day of May, 1898, became and ever since has been and still is the chairman of the executive committee of the board of directors of said Union Pacific Railroad Company; and that on the 7th day of January, 1904, and not before, he became and ever since has been and still is president of said corporation.

(3) They admit that the said Jacob H. Schiff became a director of said Union Pacific Railroad Company on the 1st day of March, 1898, and continued to be a director of said company until the 10th day of April, 1906, when he resigned.

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(4) They admit that the said Otto H. Kahn became a director of said Union Pacific Railroad Company on the 1st day of July, 1897, and continued to be a director of said company until the 10th day of April, 1906, when he resigned.

(5) They admit that the said James Stillman became a director of said Union Pacific Railroad Company on the 6th day of December, 1897, and continued to be a director of said company until the 13th day of February, 1908, when he resigned.

(6) They admit that the said James Stillman was a member of the executive committee of the board of directors from the 8th day of December, 1897, until the 13th day of February, 1908, and that said Otto H. Kahn was a member of said committee from the 8th day of December, 1897, until the 10th day of April, 1906.

(7) They admit that during all of said time the said Jacob H. Schiff and Otto H. Kahn were and still are members of a banking firm of the city of New York, doing business under the firm name and style of Kuhn, Loeb & Co., but deny that said banking house has been or is the "fiscal agent" of the defendant Union Pacific Railroad Company; and they admit that some of the stocks re-
958 ferred to in the petition were bought by said Union Pacific Railroad Company and said Oregon Short Line Railroad Company, respectively, from time to time through said banking house and that some of the bonds issued by said companies were sold to said firm.

(8) They admit that defendant Henry H. Rogers became a director of said Union Pacific Railroad Company on the 8th day of October, 1901, and that defendant Henry C. Frick became a director of said Union Pacific Railroad Company on the 11th day of October, 1904, and that both the said Rogers and the said Frick have ever since been and still are members of said board of directors.

(9) Except as herein admitted, they deny each and every allegation of subdivision II of the petition.

III. (1) They admit that defendant, Union Pacific Railroad Company, in 1897, acquired and ever since has been and still is the owner of lines of railroad extending from Council Bluffs, Iowa, to Ogden, Utah; from Kansas City, Missouri, to Denver, Colorado; and from Denver, Colorado, to Cheyenne, Wyoming.

(2) They admit that the said line of railroad extending from
959 Council Bluffs, Iowa, to Ogden, Utah, was constructed by a company incorporated by an act of Congress, entitled "An act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean, and to secure to the Government the use of the same for postal, military, and other purposes," approved July 1, 1862 (12 Stat., 489), under the name, style, and title of "The Union Pacific Railroad Company"; and they admit that the said line of railroad, extending from Kansas City, Missouri, to Denver, Colorado, was constructed by a company originally incorporated by the Territory of Kansas as the "Leavenworth, Pawnee & Western Railroad Company," which afterwards assumed the name, style, and title of "Union Pacific Railroad Company, Eastern Division," and subsequently by authority of a joint resolution of Congress approved March 3, 1869 (15 Stat., 348), changed its name to "Kansas Pacific Railway Company"; and they also admit that the said line of railroad, extending from Denver, Colorado, to Cheyenne, Wyoming, was constructed by the "Denver Pacific Railway and Telegraph Company," a corporation organized under the laws of the Territory of Colorado.

(3) They deny that the Union Pacific Railroad Company, the company incorporated by the aforesaid act of Congress
960 approved July 1, 1862, constructed a line of railroad from Julesburg to Denver, but aver that the said branch line of railroad extends from Julesburg to La Salle, Colorado, where it connects with the aforesaid line extending from Denver to Cheyenne, and that it was constructed by the Colorado Central Railroad Company, a corporation of the State of Colorado, which was subsequently consolidated with and merged into the Union Pacific, Denver and Gulf Railway Company, and thereafter was sold under foreclosure decrees against the last-named company, and the purchasers at such foreclosure sale afterward and on or about the 6th day of February, 1899, sold and conveyed the same to defendant Union Pacific Railroad Company, and that the said Union Pacific Railroad Company ever since has been and still is the owner thereof.

(4) They aver that the said lines of railroad owned by defendant Union Pacific Railroad Company and extending as aforesaid from Council Bluffs to Ogden, from Kansas City to Denver, and from Denver to Cheyenne, were located, laid out, constructed, connected, consolidated, and put into use and operation as a system of railroads under and pursuant to the aforesaid act of Congress approved
961 July 1, 1862, and an act approved July 2, 1864, entitled "An act to amend an act entitled 'An act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean and to secure to the Government the use of the same for postal, military, and other purposes,' approved July 1, 1862" (13 Stat., 356), and the several acts and joint resolutions of Congress amendatory of and supplementary to the aforesaid acts (12 Stat., 538; 13 Stat., 504; 13 Stat., 573; 14 Stat., 355; 14 Stat., 356; 14 Stat., 79; 14 Stat., 292; 15 Stat., 39; 15 Stat., 79; 15 Stat., 324; 15 Stat., 348; 16 Stat., 56; 16 Stat., 121; 16 Stat., 430; 17 Stat., 508; 18 Stat., 111; 18 Stat., 200; 18 Stat., 4; 20 Stat., 56; 20 Stat., 169; 24 Stat., 488; 25 Stat., 382; 25 Stat., 439); and they refer to the said acts and joint resolutions themselves for the provisions, purposes, and effect thereof.

(5) They admit that the said the Union Pacific Railroad Company, the said Kansas Pacific Railway Company, and the said Denver Pacific Railway and Telegraph Company were consolidated under and by virtue of the aforesaid acts of Congress, and that the corporation formed by such consolidation became and assumed the name, style, and title of "The Union Pacific Railway Com-
962 pany"; and they aver that such consolidation occurred on or about January 24, 1880.

(6) They aver that under and pursuant to the provisions of decrees of the Circuit Courts of the United States for the District

braska, the Southern District of Iowa, the District of Wyoming, District of Colorado, and the District of Utah, rendered in 1897, certain suits in equity commenced by F. Gordon Dexter and Oliver nes, second, against the Union Pacific Railway Company and others the foreclosure of the first mortgage of the Union Pacific Rail- d Company upon the said line of railroad, with its appurtenances said decrees described; and under the provisions of decrees ren- ed, respectively, by the same courts on the same dates in certain its in equity, commenced by the United States of America as com- inant against said the Union Pacific Railway Company and others the foreclosure of the lien created by or arising under the afore- d acts of Congress to secure the indebtedness to the United States America for its bonds issued under the provisions of said acts the Union Pacific Railroad Company, the said railroad extending m Council Bluffs, Iowa, to Ogden, Utah, with its appurtenances, was sold, and upon confirmation of the said sale and full com- pliance with all the terms and provisions of the decrees of the said courts in said causes the special master of the said rts duly conveyed the said railroad, with its appurtenances, so d to Union Pacific Railroad Company, defendant herein, by eds dated the 22d day of January, 1898, whereupon the possession said railroads and other property so sold was surrendered and de- ered by the receivers appointed in said suits to Union Pacific Rail- d Company, defendant herein, which has ever since held and pos- sed and now hold and possess the same.

(7) They aver that under and pursuant to the provisions of de- es of the Circuit Courts of the United States for the District of nsas and the Western District of Missouri, rendered on the 30th y of July, 1897, in certain suits in equity commenced by the United tes of America, as complainant, against said the Union Pacific ilway Company and others for the foreclosure of the lien created or arising under the aforesaid acts of Congress to secure the lebtedness to the United States of America for its bonds issued der the provisions of said acts to the Kansas Pacific Railway Com- ny; and under and pursuant to the provisions of other decrees of the same courts and of the Circuit Court of the United States for the District of Colorado in suits in equity commenced by various parties to foreclose numerous mortgages executed by d Kansas Pacific Railway Company under its different corporate mes, the said line of railroad extending from Kansas City, Mis- ri, to Denver, Colorado, with its appurtenances in said decrees scribed, was sold, and upon confirmation of the said sale and full mpliance with all the terms and provisions of the decrees of said rts in said causes, the special master of said courts duly con- yed the said railroad, with its appurtenances, to Union Pacific

Railroad Company, the defendant herein, by deeds dated on o
about the 19th day of April, 1898, whereupon the possession of sai
railroad and other property so sold was surrendered and delivere
by the receivers appointed in said suits to Union Pacific Railroa
Company, defendant herein, which has ever since held and possesse
and now holds and possesses the same.

(8) They aver that under and pursuant to the provisions of de
crees of the Circuit Courts of the United States for the Districts o
Colorado and Wyoming, rendered on the 31st day of July, 1897, i
certain suits in equity to foreclose the first mortgage of the Denv
Pacific Railway and Telegraph Company, the said line of rai
965 road extending from Denver, Colorado, to Cheyenne, Wy
oming, with its appurtenances in said decrees described, w
sold and upon confirmation of the said sale and full compliance
with all the terms and provisions of said decrees of said courts i
said causes the special master of said courts duly conveyed the sa
railroad, with its appurtenances, to Union Pacific Railroad Com
pany, defendant herein, by deeds dated on or about the 22d day o
March, 1898, whereupon the possession of said railroad, with i
appurtenances and other property so sold, was surrendered and deli
ered by the receivers appointed in said suits to Union Pacific Rai
road Company, defendant herein, which has ever since held and po
sessed and now holds and possesses the same.

(9) They admit that the Central Pacific Railroad Company
California was organized under the laws of the State of California
and they admit that the Western Pacific Railroad Company w
also organized under the laws of said State. They admit that t
said Central Pacific Railroad Company of California and the s
Western Pacific Railroad Company were consolidated into and un
the name, style, and title of "Central Pacific Railroad Compan
They admit that said Western Pacific Railroad Company c
966 structed a line of railroad from San Francisco to Sacramen
California, and that said Central Pacific Railroad Compa
of California commenced the construction, and after the consoli
tion aforesaid the company formed by such consolidation compl
the said railroad from Sacramento, California, to Ogden, Ut
where it connects with the main line of the Union Pacific Railr
Company.

(10) They refer to the said acts of Congress approved July
1862 (12 Stat., 489), July 2, 1864 (13 Stat., 356), and June 20, 1
(18 Stat., 111), for answer to the allegations of the petition resp
ing the aid granted in bonds and land to, and the duties and resp
sibilities imposed by said acts upon, the corporations aided
authorized by said acts to construct the railroads therein mentio
and provided for.

(11) They admit that defendant Oregon Short Line Railroad Company is now and since about the 16th day of March, 1897, continuously has been the owner of lines of railroad extending from the junction with the main line of the Union Pacific Railroad at Granger, Wyoming, to Huntington, Oregon, and of another line of railroad extending from Salt Lake City, Utah, to Butte, Montana—the track in the State of Idaho between Pocatello and McCammon being common to both of said lines. They admit that defendant The Oregon Railroad and Navigation Company is and since about the 18th day of August, 1896, continuously has been the owner of a line of railroad extending from a connection with the line of the Oregon Short Line Railroad Company at Huntington, Oregon, to Portland, Oregon.

(12) They admit that each of these defendants is the owner of important lines of railroad as branches of the lines hereinbefore described; the branches of the lines owned by Union Pacific Railroad Company being located in the States of Nebraska, Kansas, Colorado, Wyoming, and Utah; the branches owned by the Oregon Short Line Railroad Company being located in the States of Utah, Idaho, Montana, and Wyoming; and the branches owned by The Oregon Railroad and Navigation Company being located in the States of Oregon, Washington, and Idaho.

(13) They admit that long prior to the date alleged in the petition the Union Pacific Railroad Company acquired and has ever since owned and still owns substantially all of the capital stock of the Oregon Short Line Railroad Company. They admit that long prior to the date alleged in the petition the Oregon Short Line Railroad Company acquired and has ever since owned and still owns substantially all of the capital stock of the Oregon Railroad and Navigation Company.

(14) They admit that by means of such stock ownership the Union Pacific Railroad Company has since its acquisition been able to elect, by voting upon such stock through its proxies, the directors of said Oregon Short Line Railroad Company, and that the latter, by voting upon said stock through its proxies, has elected the directors of The Oregon Railroad and Navigation Company; but they aver that the railroads and other property of the Oregon Short Line Railroad Company have at all times been controlled, managed, and operated by said Oregon Short Line Railroad Company in its own name and by its own officers and agents, and that the railroads and other property of The Oregon Railroad and Navigation Company have at all times been controlled, managed, and operated by The Oregon Railroad and Navigation Company in its own name and by its own officers and agents.

(15) They admit that the lines of railroad owned by these defendants, respectively, have been and are operated as one system and that said lines extending from Kansas City, Missouri, and Council Bluffs, Iowa, to Salt Lake City and Ogden, Utah, Butte, Montana,
and Portland, Oregon, have composed and still compose con-
969 tinuous through lines operated harmoniously and, so far as
affecting the shipping and traveling public, practically as if owned and operated by a single company.

(16) They aver that long prior to July 2, 1890, when the so-called "antitrust act" of Congress was approved, the Union Pacific Railway Company, the consolidated corporation organized and existing under the acts of Congress, as hereinbefore alleged, acquired a large majority of the stock of the Oregon Short Line and Utah Northern Railway Company, which constructed the lines of railroad now owned by defendant Oregon Short Line Railroad Company, as well as a portion of the lines now owned by the defendant San Pedro, Los Angeles and Salt Lake Railroad Company, and that long prior to said July 2, 1890, said Oregon Short Line and Utah Northern Railway Company acquired a large majority of the capital stock of the Oregon Railway and Navigation Company, the corporation which constructed and formerly owned the line of railroad now owned by defendant The Oregon Railroad and Navigation Company, extending from Huntington to Portland, Oregon, with various branches, and long prior to July 2, 1890, the said lines of railroad extending
from Kansas City, Missouri, and Council Bluffs, Iowa, to Salt
970 Lake City and Ogden, Utah, Butte, Montana, and Portland,
Oregon, were and ever since have been operated harmoniously as one system and as continuous lines and, so far as affecting the shipping and traveling public, practically as if owned and operated by a single corporation.

(17) They aver that the said lines of railroad and all other property of said Oregon Short Line and Utah Northern Railway Company were sold under decrees of the circuit courts of the United States for the districts of Utah, Wyoming, Idaho, and Montana foreclosing mortgages thereon on or about the 9th day of January, 1897, and that the purchasers at such sale caused to be incorporated the defendant Oregon Short Line Railroad Company, and conveyed to it the railroads and properties so sold. They aver that the said line of railroad extending from Huntington to Portland, Oregon, and all other property of the Oregon Railway and Navigation Company were sold under decrees of the circuit courts of the United States for the district of Oregon, foreclosing mortgages thereon on or about the 9th day of July, 1896, and the purchasers at such sale caused to be incorporated the defendant, the Oregon Railroad and Navigation

mpany, and conveyed to it the railroads and properties so sold.

1 (18) They admit that in the year 1901 the Oregon Railroad and Navigation Company owned three steamships averaging out 1,350 net tons each, plying between Portland and San Fran-co, by way of the Willamette and Columbia Rivers and the Pacific ean; and they aver that in the year 1904 the San Francisco and ortland Steamship Company, a corporation of the State of Cali-rnia, was organized; that all its stock was acquired by the Oregon ilroad and Navigation Company, and that two of said steamships re transferred by charter to said San Francisco and Portland eamship Company, and that said San Francisco and Portland eamship Company has since operated and now regularly operates o steamships—one of 2,317 tons and one of 1,836 tons—between n Francisco and Portland, via the Pacific Ocean and the Willam-te and Columbia Rivers.

(19) They deny that the Oregon Railroad and Navigation Com-ny ever operated a line of steamships or any steamships between ortland, Oregon, and Japan, and China, or other Asiatic ports. hey admit that on or about the 14th day of January, 1901, the Port-nd and Asiatic Steamship Company was incorporated under the laws of the State of Oregon with a capital of $100,000, and

2 that all of its capital stock was acquired and has ever since been and still is owned by said the Oregon Railroad and Navi-ation Company; and they admit that said Portland and Asiatic eamship Company has sometimes operated steamships between ortland, Oregon, and Asiatic ports under charter, but they deny at said steamship company has ever owned, or now owns, any eamships, or has ever operated, or now operates, any regular line f steamships.

(20) They aver that the said Portland and Asiatic Steamship Com-ny was incorporated and that the ships chartered and operated by were chartered and operated for the benefit of the traffic of the rail-ad lines of the Oregon Railroad and Navigation Company—that is ay, to afford an outlet by way of Portland and the Columbia River r the grain and flour grown and milled on the line of the Oregon ailroad and Navigation Company in eastern Oregon and the State f Washington which otherwise would have moved via the rails of the orthern Pacific Railway Company and Great Northern Railway ompany to Puget Sound and the traffic would have been lost to the regon Railroad and Navigation Company, and they aver that the operation of the steamships of said Portland and Asiatic

73 Steamship Company has of itself been unprofitable and re-sulted in a large loss to said company every year, except one

during the war between Japan and Russia, and that it was inaugurated and is maintained only because, in the judgment of the Oregon Railroad and Navigation Company, the losses sustained in the operation of said steamships are more than compensated by retaining for the rails of the Oregon Railroad and Navigation Company and for the mills and merchants on its lines the grain and flour traffic which otherwise would have moved to Puget Sound and been lost to said company and to them.

(21) They deny that it has been or ever was practicable for the said steamships operated by the Portland and Asiatic Steamship Company to compete to any considerable or substantial extent with lines of steamers operated between San Francisco and Asiatic ports and Puget Sound and Asiatic ports for traffic originating in the interior of the United States or on the Atlantic seaboard.

(22) They admit that the Southern Pacific Company was, on January 1, 1901, and still is the owner of a large majority of the capital stock of corporations which separately own and operate connecting links of a line of railroad extending from New Orleans
974 in the State of Louisiana, and Galveston, in the State of Texas, and through the States of Louisiana and Texas and the Territories of New Mexico and Arizona and the States of California and Oregon to Los Angeles and San Francisco and other points in California and to Portland, Oregon.

(23) They admit that said Southern Pacific Company in 190 owned and operated and has ever since owned and operated and now owns and operates lines of steamships between New York and New Orleans and between New York and Galveston and between New Orleans and Havana, which connect at New Orleans and Galveston with the rail lines controlled by it.

(24) They aver that the Central Pacific Railroad Company, the corporation formed by the consolidation of the Central Pacific Railroad Company of California and the Western Pacific Railroad Company, and which constructed and formerly operated the said railroad from San Francisco to a connection with the Union Pacific Railroad Company at Ogden, was unable to pay its indebtedness to the Government of the United States, arising from the issue to it of Government bonds as aforesaid at the maturity of said indebtedness, and was also unable to pay its indebtedness evidenced by its own bonds, aggregating a large amount, as such indebtedness
975 matured during and prior to the year 1899; that the "Central Pacific Railway Company" was organized under and by virtue of the laws of the State of Utah, and acquired by purchase from the said consolidated Central Pacific Railroad Company, on or about the 29th day of July, 1899, the said railroads so constructed

rom San Francisco to a connection with the main line of the Union acific Railroad Company at Ogden, Utah, with its various branches; nd that the power of said Central Pacific Railroad Company to ake such sale and of the Central Pacific Railway Company to make uch purchase was expressly conferred upon and existed in them, re-pectively, by the laws of the States of Utah, Nevada, and California.

(25) They aver that such purchase and sale were made for the urpose of paying the indebtedness of said Central Pacific Railroad ompany to the United States of America and to the holders of its wn bonds; that all such indebtedness was thereby paid and dis-harged in full; and that the incorporation and organization of the aid Central Pacific Railway Company and the said purchase and ale and the payment of all such indebtedness were caused and rought about by the defendant Southern Pacific Company; and that the means for paying and satisfying all such indebted-976 ness were provided and procured by or at the instance of the said Southern Pacific Company.

(26) They admit that on January 1, 1901, said Southern Pacific ompany owned, has ever since owned, and still owns 100,500 shares ut of a total of 200,000 shares of the capital stock of the Pacific Iail Steamship Company, and that said Pacific Mail Steamship ompany during all said period has operated a line of steamships etween San Francisco, the Hawaiian Islands, the Philippine Islands, nd Chinese and Japanese ports, and also a line of steamships be-ween San Francisco and Panama. But they deny that the said line f steamships, with the railroad of the Panama Railroad Company nd steamships operating in the Atlantic Ocean, forms a through ine between New York and San Francisco via the Isthmus of anama.

(27) They deny that the said rail lines of the Southern Pacific ompany from the Mississippi River to Portland, Oregon, by way f Los Angeles and San Francisco, were at any time in competition ith the said lines of the Union Pacific Railroad Company for the ransportation of freight from points in the Mississippi Valley and in the Eastern States or elsewhere to the Pacific coast and 977 points in Colorado and other interior States; and they deny that the steamship lines of the Southern Pacific Company be-tween New York and New Orleans and New York and Galveston, together with the rail lines of said company in connection therewith, were in active competition with the lines of the Union Pacific Rail-road Company for a large amount of traffic originating on the At-lantic coast and in the Central States.

(28) They aver, on the contrary, that in the transcontinental lines of railroad reaching the Pacific coast south of Portland, Oregon,

the Union Pacific Railroad was but a link, about 1,000 miles in length, and the defendant Union Pacific Railroad Company merely an intermediate carrier without any power to make rates upon such traffic, and that the defendant Southern Pacific Company, through its possession and operation of the Central Pacific Railroad and its ownership of all the stock of the Central Pacific Railway Company, controlled that portion of such transcontinental line, about 850 miles in length, extending from Ogden, Utah, to the Pacific Ocean at San Francisco and other points in California, and no rate between the Missouri River or points east thereof and the Pacific coast south of Portland or Asiatic ports could be made
978 by these defendants except with the consent of and by agreement with said Southern Pacific Company; and while these defendants separately owned connecting lines of railroad, operated as a single system as aforesaid, extending from the Missouri River to Portland, Oregon, and operated certain small steamships between Portland and San Francisco, as aforesaid, yet they aver that such route via Portland was not only an impracticable route as a competitor of said Southern Pacific Company, but any attempt of these defendants to use it as such competitor would have greatly injured defendant Union Pacific Railroad Company, because said Southern Pacific Company would thereupon have preferred the rivals of said Union Pacific Railroad Company in routing and interchanging traffic at Ogden, and the business in tonnage and revenue which defendant Union Pacific Railroad Company would thereby have lost would have greatly exceeded the total volume of any business it could have secured over such impracticable route in competition with said Southern Pacific Company, so that the interest of defendant Union Pacific Railroad Company and the companies formerly owning its lines always prevented it and them from using or attempting to use the said route via Portland in competition with said Southern Pacific Company upon any business to or from
979 the Pacific coast south of Portland or to or from Asiatic ports.

(29) They deny that the rail line of said Southern Pacific Company between San Francisco and Portland was in active competition with the ships of the Oregon Railroad and Navigation Company plying between San Francisco and Portland, and aver that competition between said lines was never practicable.

(30) They deny that ships operated by the Portland and Asiatic Steamship Company between Portland, Oregon, and Asiatic ports in connection with the rail lines of the Union Pacific Railroad Company, or otherwise, were ever in competition with the Pacific Mail Steamship Company and the rails of the Southern Pacific Company.

(31) They deny that the lines of railroad of the Oregon Short Line Railroad Company and the Oregon Railroad and Navigation

Company between Ogden, Utah, and Portland, Oregon, were ever in competition with the lines of said Southern Pacific Company between said points, and aver that such competition was never practicable.

(32) They deny that any competition between the system of railroads and steamships owned and controlled by the Union Pacific Railroad Company and the system of railroads and steamships owned and controlled by the Southern Pacific Company, if any such competition ever existed, was substantial or that it included a large volume of traffic of any kind.

(33) They admit that the Atchison, Topeka and Santa Fe Railway Company has been for a period of more than eight years the owner and in control of lines of railroad, as alleged in Subdivision III of the petition, and admit that the lines of the Union Pacific Railroad Company, in connection with the line of the Central Pacific Railway Company, operated by the Southern Pacific Company, have been during such period and still are competitors of the Atchison, Topeka and Santa Fe Railway Company for a large volume of traffic to and from the Pacific coast, and that the lines of the Union Pacific Railroad Company and the Atchison, Topeka and Santa Fe Railway Company have been and are competitive between various points in Kansas, Colorado, and other States.

(34) They admit that the lines of the Atchison, Topeka and Santa Fe Railway Company, since the completion of the same to San Francisco, California, in the year 1900, constituted the only line of transportation by rail from the Pacific coast south of Portland to the Mississippi Valley and the East except the lines of the Southern Pacific Company to the Gulf of Mexico and the lines of the Central Pacific Railway Company operated by the Southern Pacific Company in connection with the Union Pacific Railroad until the completion of the San Pedro, Los Angeles and Salt Lake Railroad in the year 1905.

(35) They have no knowledge of the operation by the Atchison, Topeka and Santa Fe Railway Company of a line of steamships between San Diego, California, and Asiatic ports, as alleged in the petition, but they deny that the traffic handled by any such steamship line, if any such line was ever operated, competitive between said Southern Pacific Company and the Atchison, Topeka and Santa Fe Railway Company and the Union Pacific Railroad Company, was of great volume, and embraced both passengers and freight.

(36) They admit that the Northern Pacific Railway Company, the Great Northern Railway Company, and the Chicago, Burlington and Quincy Railroad Company each owns and operates lines of railroad substantially as alleged in said petition; but they deny that the

lines of said Northern Pacific Railway Company in and of themselves are competitive with the lines of these defendants, and they admit that the lines of the Chicago, Burlington and Quincy
982 Railroad Company are competitive with the lines owned and operated by the defendant Union Pacific Railroad Company to a limited extent and between certain points.

(37) They deny that traffic between the Pacific coast and Asiatic ports and points on and east of the Missouri and Mississippi Rivers is competitive between the lines of the Union Pacific Railroad Company and connections owned by it, and the lines of said Northern Pacific Railway Company and The Great Northern Railway Company and connections and steamship lines controlled by them.

(38) They admit that the defendant The San Pedro, Los Angeles and Salt Lake Railroad Company is the owner of a line of railroad extending from San Pedro on the Pacific Ocean, in the State of California, by way of Los Angeles, through the States of California, Nevada, and into Utah to Salt Lake City, and that most of said line is directly owned by said corporation, and the remainder of it is operated under lease or trackage contracts, and that the same constitutes a continuous line between San Pedro and Salt Lake City; but they deny that by said contract or otherwise there ever was any suppression or restriction of competition by said line with the lines of any defendant herein.

983 (39) They admit that the Denver and Rio Grande Railway Company owns a line of railroad from Salt Lake City, Utah, to Denver, Colorado, and that it is a competitor of defendant Union Pacific Railroad Company, but not of defendant Southern Pacific Company.

(40) Except as herein admitted they deny each and every allegation of Subdivision III of the petition.

IV. (1) They deny that in the spring of 1901, or at any other time, the defendants, Harriman, Schiff, Kahn, Stillman, and Union Pacific Railroad Company, or any of them, conspired to restrain trade and commerce among the several States and between said States and foreign countries carried on by said Union Pacific Railroad Company and said Southern Pacific Company, or any other company or any steamship lines, or to monopolize or attempt to monopolize any such trade and commerce, or to restrain or prevent competition among said railway systems, or any other railway systems, and said steamship lines, or any other steamship lines, in respect to any such commerce, or to deprive the public of the facilities and advantages of the carrying on of such trade and commerce through the inde-
984 pendent competition, if any there was, of said railway systems and steamship lines or other railway systems or steamship lines, or that said defendants, or any of them, ever entered into

combination or conspiracy to effect a virtual or substantial consolidation of said Union Pacific Railroad Company and any other transcontinental railway companies or steamship companies, or to place restraint upon any competitive commerce carried on by such companies, if any such there was, or to monopolize or attempt to monopolize the same, or to suppress any competition existing between any of said companies or lines by the means alleged in the petition or otherwise.

(2) They admit that on or about the 20th day of February, 1901, defendant Union Pacific Railroad Company acquired by purchase from said firm of Kuhn, Loeb & Company 750,000 shares of the capital stock of said Southern Pacific Company of the aggregate par value of $75,000,000 out of 1,978,399 shares of the aggregate value of $197,839,900 then issued and outstanding; but they deny that the said stock was purchased or acquired in pursuance of any conspiracy or combination or for any of the purposes alleged in said petition.

(3) They admit that thereafter, to wit, on or about the 26th
985 day of February, 1902, defendant Union Pacific Railroad Company sold and delivered the said 750,000 shares of the stock of said Southern Pacific Company to defendant Oregon Short Line Railroad Company, which has ever since owned and still owns the same.

(4) They admit that thereafter, to wit, on or about the 31st day of May, 1902, defendant Oregon Short Line Railroad Company acquired by purchase from said Kuhn, Loeb & Company, 150,000 additional shares of stock of said Southern Pacific Company, which said Oregon Short Line Railroad Company has ever since owned, and still owns; but they deny that the said additional shares were purchased or acquired in pursuance of any conspiracy or combination, or for any of the purposes alleged in said petition.

(5) They admit that thereafter, when, in 1904, defendant Southern Pacific Company created an issue of preferred stock, which it offered to its stockholders for subscription *pro rata* at par, said Oregon Short Line Railroad Company, as the owner of 900,000 shares of the common stock of said Southern Pacific Company, exercised its right, and subscribed for and received and has ever since owned and still owns 180,000 shares of the preferred stock of
986 said Southern Pacific Company; and they aver that thereafter in 1907, when said Southern Pacific Company increased its said preferred stock by an additional issue thereof, which it offered to the holders of its outstanding stock for subscription *pro rata* at par, said Oregon Short Line Railroad Company, as the owner of 1,080,000 shares of the stock of said Southern Pacific Company, exercised its right, and subscribed for and received 162,000 additional shares of the preferred stock of said Southern

Pacific Company, and it has ever since owned and still owns the same; so that said Oregon Short Line Railroad Company now owns 900,000 shares of common stock and 342,000 shares of preferred stock making a total of 1,242,000 shares of the capital stock of said Southern Pacific Company, out of a total of 2,726,498 shares issued and outstanding; but they deny that the defendants Harriman, Schiff, Kahn, Stillman, and Union Pacific Railroad Company caused said Southern Pacific Company to issue said preferred stock; and deny that it was acquired by said Oregon Short Line Railroad Company or the Union Pacific Railroad Company in pursuance of any conspiracy or for any of the purposes or with the intent alleged in said petition.

(6) They deny that the stock of the Southern Pacific Company so acquired and owned by defendant Oregon Short Line Rail-
987 road Company is voted at the dictation and instance of the defendants Harriman, Stillman, Schiff, and Kahn, and that the directors of said company have been selected by the said Harriman, Stillman, Schiff, and Kahn.

(7) They deny that the Union Pacific Railroad Company or the Oregon Short Line Railroad Company controls or has ever controlled the management, operation, or business affairs of said Southern Pacific Company or exercised any control whatsoever over it, except such as may result from the voting upon the stock of said Southern Pacific Company owned by said Oregon Short Line Railroad Company at meetings of the stockholders for the election of directors of said Southern Pacific Company.

(8) They admit that at the annual meetings of the stockholders of the Southern Pacific Company held since the stock was so acquired and owned by said Oregon Short Line Railroad Company such stock has constituted a majority of the shares represented at such meetings; and they admit that by voting upon the said shares, through its duly authorized agents and proxies, aided by the votes upon other shares owned by various other stockholders of said Southern Pacific Company, the defendant Oregon Short Line Railroad
988 Company has been able to elect the directors of said Southern Pacific Company, but they aver that at no such meeting have any votes ever been cast by any stockholder against the persons so elected.

(9) They admit that since April 3, 1901, a majority of the persons who have been directors of said Southern Pacific Company were at the same time directors of said Union Pacific Railroad Company.

(10) They admit that the stock of said Southern Pacific Company not owned by defendant Oregon Short Line Railroad Company is owned by a large number of individuals, firms, and corporations residing in many different places; but they deny that said stock

lers are or will be unable to elect the directors of said Southern ific Company, if they should deem it to their interest to do so, in osition to those voted for by said Oregon Short Line Railroad npany; and they aver that the reason why said stockholders have heretofore elected the directors of said company is that they e been satisfied with the directors nominated and elected by the nts and proxies of said Oregon Short Line Railroad Company in junction with the agents and proxies of other stockholders.

(11) They admit that defendant Harriman on the 3d day of April, 1901, became chairman of the executive committee, and on the 26th day of September, 1901, became the president aid Southern Pacific Company and ever since has been and still uch chairman and president.

12) They admit that the same person is the chief traffic officer, same person the chief operating officer, and the same person chief accounting officer of both companies, and that said com-ies have jointly employed numerous commercial and other agents; they aver that a very large majority of the agents, officers, and loyees of said companies are separate.

13) They admit that since about the 26th day of August, 1904, Pacific Mail Steamship Company, the Portland and Asiatic amship Company, and the San Francisco and Portland Steam-p Company have had the same officers and agents; but they deny t there ever was any competition between any of said steamship panies or said railroad or steamship lines or that such commerce been monopolized.

14) They aver that although the railroad of the Union Pacific lroad Company and the said Central Pacific Railroad physically formed a continuous line from the Missouri River to the Pacific Ocean, yet almost one-half the length of said line, to wit, from Ogden to San Francisco, with many branches, was ned by the Central Pacific Railway Company and was controlled l operated by the Southern Pacific Company, and no rate for transportation of passengers or property over the said line be-een the Missouri River and the Pacific Ocean could be made hout the concurrence of both the Union Pacific Railroad Com-ny and the Southern Pacific Company; and the only means by ich the Union Pacific Railroad Company could secure control of said Central Pacific Railroad was to secure control of the said uthern Pacific Company, which owned every share of the stock said Central Pacific Railway Company. That the lines of rail-ad now owned by defendant Union Pacific Railroad Company d been greatly improved while in the hands of receivers in the reclosure proceedings hereinbefore mentioned, and prior to Janu-y 1, 1901, it recognized the necessity, in the interest of the public

as well as of itself, of further improving, and it had determined to further improve, the said railroads, particularly the line between Council Bluffs and Ogden, in order to be able to develop its traffic and serve and accomplish the object of its construction, and to handle such traffic efficiently and economically. Unless the
991 line of the Central Pacific Railway Company, extending from Ogden to the Pacific Ocean, was likewise improved and put and maintained in condition to handle promptly and efficiently the transcontinental traffic passing over the Union Pacific Railroad, the improvement of the latter as contemplated would be practically futile. The said Central Pacific Railroad had been mortgaged for large amounts, and the Central Pacific Railway Company was without means or credit to procure the means necessary to bring by improvements its said line of railroad up to anything approximating the condition and efficiency of said Union Pacific Railroad; and the Southern Pacific Company was also without such means or credit, as practically all of its assets and the assets of the various corporations controlled by it were mortgaged or otherwise pledged. The stock of defendant Southern Pacific Company formerly owned by Collis P. Huntington, who died in August, 1900, together with other stock amounting to nearly one-half of the shares of said company, was for sale, and if the same had been acquired by an interest adverse to defendant Union Pacific Railroad Company its plans, efforts, and object to improve its line of railroad between Council Bluffs and Ogden and the substantial object of the
992 aforesaid acts of Congress providing for a continuous line and system from the Missouri River to the Pacific Ocean would have been defeated and rendered futile, and defendant Union Pacific Railroad Company would furthermore have been deprived of an opportunity to become, and rival lines would have become, the preferred connection of said Southern Pacific Company and Central Pacific Railway Company at Ogden, Utah, and the value of its lines of railroad and the credit of the Union Pacific Railroad Company would have been greatly and permanently depreciated and impaired. For the purpose of procuring the improvement of said Central Pacific Railroad and to bring it up to the standard and degree of efficiency approximately of the line of the Union Pacific Railroad, and in order that said Union Pacific Railroad Company should become and securely remain the preferred connection of said Southern Pacific Company and Central Pacific Railway Company at Ogden, and thereby secure the unrouted traffic of said companies interchanged at Ogden, and in order to protect itself against the acquisition and control of said Central Pacific Railway Company by adverse interests to these defendants, and with any intent or purpose in any wise to suppress or restrain any

petition in interstate or foreign commerce, the said 900,000 shares of the capital stock of said Southern Pacific Company were purchased and acquired as hereinbefore alleged by defendants Union Pacific Railroad Company and Oregon Short Line Railroad Company and are now so held by the company last named.

(15) They aver that such acquisition greatly increased and strengthened the credit not only of said Southern Pacific Company, but also of these defendants, and enabled them to procure means for improving the said railroads and increasing the efficiency of the same in the public interest upon much better terms and more readily than otherwise would have been possible. Immediately after such acquisition of the said stock, the improvement of the lines of the said Central Pacific Railway between Ogden and the Pacific Ocean, as well as the lines of these defendants, was commenced, and ever since has been actively prosecuted, so that between the 1st day of January, 1901, and the 1st day of January, 1908, there has been expended (in addition to ordinary expenditures for maintenance) for betterments and improvements of the line of the said Central Pacific Railway Company between Ogden and San Francisco alone about $24,000,000, being approximately $30,000 per mile; the great "cut-off" across Salt Lake, Utah, has been constructed and completed, the grades and curves have been greatly reduced, and the said line has been shortened about 51 miles. And these defendants aver that such improvements would not and could not have been made except for the improvement of the credit of both companies resulting from the acquisition by defendant Union Pacific Railroad Company and Oregon Short Line Railroad Company of the stock of the Southern Pacific Company as aforesaid, thereby securing for the Union Pacific Railroad Company an adequate and permanent outlet and establishing upon uniform standards a continuous line and railroad system from the Missouri River to the Pacific Ocean, as contemplated by said acts of Congress.

(16) They aver that the reports of defendant Union Pacific Railroad Company and Southern Pacific Company, returned under oath to the Interstate Commerce Commission for the fiscal year ending June 30, 1901, and for every fiscal year since that date, have shown that a majority of the directors of the Southern Pacific Company were at the same time directors of the Union Pacific Railroad Company; that since the 1st day of July, 1901, the records of said commission have shown that the same person was chief traffic officer of said Southern Pacific Company and of these defendants; that the purchase in 1901 of 750,000 shares and in 1902 of 150,000 additional shares of said Southern Pacific Company by Union Pacific Railroad Company and Oregon Short Line Railroad Company became known to said Interstate Commerce Commission and

to the public at large soon after said purchases were made; that the fact that said Southern Pacific Company and these defendants had many common officers and agents, and the relations existing between said Southern Pacific Company and these defendants in all their details became known as they occurred to the Interstate Commerce Commission and to the public at large, and have been published constantly throughout the United States, not only in the news press but by advertisements of these defendants and of said Southern Pacific Company, and have never been denied or in any way concealed. They aver that the acquisition by the Union Pacific Railroad Company and Oregon Short Line Railroad Company of said 750,000 shares of the stock of the Southern Pacific Company in 1901, and of said additional 150,000 shares of such stock in 1902 by defendant Oregon Short Line Railroad Company, were actual purchases of said stock made in good faith, and were completed and fully executed by the delivery of the certificates for said 750,000 shares in
996 1901 and of said 150,000 shares in 1902 and by the payment of the price therefor at the time of such delivery. That the election of directors of said Southern Pacific Company and the election and appointment of all the officers and agents of said Southern Pacific Company and all other matters and things complained of in the petition herein, so far as they have occurred, were merely the natural and necessary consequences and results of said purchase of the said stock. That the acquisition of the preferred stock of said Southern Pacific Company by defendant Oregon Short Line Railroad Company as aforesaid by the exercise of subscription rights did not change and has not changed the relative voting strength or position of the said Oregon Short Line Railroad Company from what it was upon the completion of the purchase of said two blocks aggregating 900,000 shares of the common stock of the Southern Pacific Company as aforesaid. And these defendants aver that by reason of the premises, the right to maintain this suit and all rights of action or prosecution by the Government of the United States for or on account of the acquisition or ownership by either of these defendants of stock of said Southern Pacific Company accrued, if at all, more than three years and more than five years next before the commencement of this suit, and is therefore barred
997 by the statutes of the United States in such cases made and provided.

(17) They deny each and every allegation of Subdivision IV of the petition respecting any combination or conspiracy between the defendants Harriman, Schiff, Kahn, Stillman, and Union Pacific Railroad Company, for any of the purposes or with any of the intents alleged; and deny each and every allegation of said Subdivision IV of said petition not herein expressly admitted.

. (1) They deny that the defendants Harriman, Schiff, Kahn, lman, and Union Pacific Railroad Company in the spring of 1, or at any other time, caused the Union Pacific Railroad Com- y to acquire a majority of the stock of the Northern Pacific lway Company pursuant to any conspiracy to restrain trade and merce among the several States and with foreign nations, to nopolize, or attempt to monopolize, such trade and commerce, or suppress any competition; and they deny all the allegations of division V of the petition respecting any conspiracy or combi- ion for that or any other purpose between any of the defendants his suit.

2) They admit that in the year 1901 said Oregon Short Line Railroad Company purchased $37,023,000 par value of the common stock, and $41,085,000 par value of the preferred stock of the Northern Pacific Railway Company, and that at time of such purchase the total stock of the Northern Pacific lway Company issued and outstanding was of the aggregate par ue of $155,000,000, but deny that such purchase was in pursuance ny conspiracy or combination or for any of the purposes alleged he petition.

3) They admit the incorporation of the Northern Securities npany, and also the retirement of the preferred stock by an addi- al issue of common stock of the Northern Pacific Railway Com- y as alleged in said petition.

4) They admit the sale and transfer of said stock to the Northern urities Company, and the receipt by said Oregon Short Line ilroad Company of $82,491,871 par value of the stock of said rthern Securities Company represented by certificates issued in name of Edward H. Harriman and Winslow S. Pierce, who was that time general counsel of defendant Union Pacific Railroad mpany; and they admit that neither the said Harriman nor the d Pierce had any personal interest in said shares.

5) They admit the commencement of a suit by the United States of America against said Northern Securities Company) and others, and the decision of said suit as alleged in the petition.

(6) They admit the commencement thereafter of a suit by said egon Short Line Railroad Company, Edward H. Harriman, Wins- S. Pierce, and The Equitable Trust Company of New York, as ged in the petition; and they admit that the relief sought by the plainants in said suit was denied by the decrees entered therein. t they aver that the said courts by said decrees approved the dis- bution by the Northern Securities Company of the stock of the rthern Pacific Railway Company and the Great Northern Rail- y Company complained of by defendant Oregon Short Line Rail-

road Company and its codefendants in said suit; and that as a result of said distribution and of the approval of the same in said suit the defendant Oregon Short Line Railroad Company, during the year 1904, received from the Northern Securities Company, as the interest and share of said Oregon Short Line Railroad Company of the assets so distributed, 281,828 shares (being 18.18 per cent) of the capital stock of the Northern Pacific Railway Company, and 216,520 shares (being 17.32 per cent) of the capital stock of The Great Northern Railway Company; and that no doubt as to the right of said

1000 Oregon Short Line Railroad Company to so receive and hold the said shares was intimated by any of the courts in such suit.

(7) They aver that defendant Oregon Short Line Railroad Company upon the final decision of said suit proceeded from time to time to sell the stock of the Northern Pacific Railway Company, and of the Great Northern Railway Company, so received by it, as such sales could be advantageously affected; and that by such sales the amount of such stock so held has been steadily reduced, so that at the date of the commencement of this suit the said Oregon Short Line Railroad Company had sold all but 1,128 shares of the aggregate par value of $112,800 of the stock of the Northern Pacific Railway Company, and all but 4,041 shares of the aggregate par value of $404,100 of the stock of the Great Northern Railway Company, which it had received from such distribution of the assets of said Northern Securities Company; and said Oregon Short Line Railroad Company, at the date of the commencement of this suit, also owned 32,516 partially paid shares of the Northern Pacific Railway Company and 38,700 partially paid shares of the Great Northern Railway Company, for which it had subscribed upon increases of the stock of said companies since said distribution was made.

1001 (8) They deny that the defendants Harriman, Schiff, Kahn, Stillman, and Union Pacific Railroad Company, or any other persons associated with them, caused the said suit of Oregon Short Line Railroad Company, Edward H. Harriman, Winslow S. Pierce and the Equitable Trust Company of New York against Northern Securities Company to be prosecuted for the purpose of effectuating any conspiracy to restrain trade and commerce or to smother competition or to monopolize any trade and commerce as in said petition alleged.

(9) They deny each and every allegation of said Subdivision not herein expressly admitted.

VI. (1) They admit that prior to the year 1902 defendant William A. Clark, together with others, caused to be incorporated the defendant The San Pedro, Los Angeles & Salt Lake Railroad Company, but deny that it was for the purposes alleged in the petition;

fer to the articles of incorporation of said company for the purposes
its incorporation.

(2) They admit that defendants Harriman and Clark, on or about
e 9th day of July, 1902, entered into and executed an agreement in
writing, and that "Exhibit A" to the petition is a true copy
02 of such agreement; but they deny that said agreement was en-
tered into for any of the purposes alleged in Subdivision VI
f the petition, or for any purpose not set forth or mentioned in said
Exhibit A"; and they aver that the said Harriman in entering into
d executing said contract was acting for defendant Oregon Short
ine Railroad Company and for no other corporation or person.

(3) They admit that, pursuant to said contract, "Exhibit A," other
ntracts between the said Harriman and the said Clark and between
e Oregon Short Line Railroad Company and the San Pedro, Los
ngeles and Salt Lake Railroad Company were made and entered
to in June and July, 1903, but deny that any of such other con-
acts were of the character or for any of the purposes alleged in
id Subdivision VI of the petition.

(4) They admit that on or about the 7th day of June, 1903, a con-
act in writing bearing that date was made and entered into between
illiam A. Clark, individually and as trustee for his associates, and
e defendant Edward H. Harriman, as trustee for the defendant
regon Short Line Railroad Company, and defendant The Farmers'
oan and Trust Company, of which "Exhibit B" annexed to the
petition is a true copy, and that stock of the defendant The
03 San Pedro, Los Angeles and Salt Lake Railroad Company was
deposited with and is still held by said The Farmers' Loan
d Trust Company, as stipulated and provided in and by said con-
act "Exhibit B."

(5) They deny each and every allegation of a conspiracy or com-
nation by and between defendants Harriman, Schiff, Kahn, Still-
an, Clark, Union Pacific Railroad Company, and Oregon Short
ine Railroad Company, or any of them, for any of the objects or
rposes mentioned in Subdivision VI of the petition, or for any
her purpose; and they deny each and every allegation in Subdi-
sion VI of the petition not herein in this subdivision expressly ad-
itted; and they aver the facts to be as follows, viz:

(a) The Oregon Short Line and Utah Northern Railway Com-
ny, the corporation which formerly owned the lines of railroad
w owned by defendant Oregon Short Line Railroad Company, re-
ived prior to the year 1890 to construct a line of railroad from
lt Lake City, Utah, to Los Angeles, California, with various
anches; and in 1890 it had constructed and put in operation the
id line from Salt Lake City, via Sandy, Provo, Juab, and Leaming-

ton to Milford, Utah, a distance of 221.9 miles, and various
1004 branches, all of which are more particularly described as
"(Parcel 1)" and "(Parcel 2)" of article second in the con-
tract, "Exhibit A," to the petition herein. It had complied with
all the laws of the Territory of Utah and the State of Nevada neces-
sary to entitle it to construct said line and had surveyed and located
the said line; and under due corporate action it had prepared and
filed maps and profiles of the same in the proper land offices in Utah
and Nevada to entitle it to and it had acquired the right of way for
said line across the lands of the United States in a general south-
westerly direction from Milford through Utah and across the State
of Nevada to the boundary line between the States of Nevada and
California. The said maps had been approved under the rules of the
Department of the Interior, and the Oregon Short Line and Utah
Northern Railway Company had graded and completed the roadbed
of said line ready for the rails from Milford to the boundary line
between Utah and Nevada, and had practically completed the grad-
ing of said line from said boundary line southwesterly to Calientes,
Nevada, a distance of about 339 miles from Salt Lake City; and had
graded a branch of said line from Calientes to Pioche, Nevada.

(b) On account of its inability at that time to procure
1005 the money necessary to complete the said line said Oregon
Short Line and Utah Northern Railway Company discon-
tinued and suspended the work of constructing said line in 1891. The
said company continued in such financial difficulty that on or about
the 13th day of October, 1893, all its railroads and other assets were
placed in the hands of receivers, who administered the same until
the sale thereof under the decrees of the Circuit Courts of the United
States for the District of Utah, Wyoming, Montana, and Idaho on
or about the 9th day of January, 1897, when they were bought by
for defendant Oregon Short Line Railroad Company as hereinbefore
alleged.

(c) The defendant Oregon Short Line Railroad Company after
its acquisition of the railroads and other assets of the Oregon Short
Line and Utah Northern Railway Company upon the foreclosure
sale thereof as aforesaid until 1901 was financially unable actively
to resume the construction of said line from Milford to Los Angeles
and in its endeavor to provide for the completion of said line of
railroad it conveyed that portion of said line, including the com-
pleted grade from Milford to the boundary line between the State
of Utah and Nevada, to the "Utah and Pacific Railroad Com-
pany," a corporation of the State of Utah, all the capital stock
1006 of which was owned by defendant Oregon Short Line Rail-
road Company, and conveyed that portion of said line from
the boundary line between Utah and Nevada to the boundary

etween Nevada and California, including the partially constructed rade of the main line from the Utah boundary line to Calientes nd of the branch line from Calientes to Pioche to the "Utah, Neada and California Railroad Company," a corporation of the State f Nevada, all of the capital stock of which was owned by defendant Oregon Short Line Railroad Company; and to construct, complete, nd own that portion of said line which was to be situated in the tate of California the defendant Oregon Short Line Railroad Comany caused to be incorporated and acquired all the capital stock f the "Utah, Nevada and California Railroad Company in Calirnia."

(d) Early in 1901 said Utah and Pacific Railroad Company and id Utah, Nevada and California Railroad Company, aided and sisted by defendant Oregon Short Line Railroad Company, actively sumed the construction of the said line of railroad from Milford Los Angeles, and to that end put a large force of men at work ying track upon and repairing, where necessary, the grade which had been constructed as aforesaid from Milford to Calientes 007 and in doing other work necessary in the construction of the said line to Los Angeles.

(e) On or about the date when the construction of said line as resumed in 1901 as aforesaid defendant, the San Pedro, Los ngeles and Salt Lake Railroad Company was incorporated under e laws of the State of Utah, with power to build or acquire railads in that State, but it did not acquire, under the laws of Nevada, e right to build or acquire railroads in that State, or acquire the ght under the laws of California to build or acquire any railroad rth or east of Riverside until long after that date. It had acired a line of railroad of inferior character extending from San edro to Los Angeles, a distance of twenty-four miles, and branches om Los Angeles to Pasadena and Glendale, a distance of about enty miles, which were the only railroads owned or controlled by id the San Pedro, Los Angeles and Salt Lake Railroad Company hen the construction of the said line from Milford to Los Angeles as resumed by defendant Oregon Short Line Railroad Company d the companies controlled by it as aforesaid.

(f) The said the San Pedro, Los Angeles and Salt Lake Railroad Company at that time controlled, through the ownership of 008 stock or otherwise, the Utah and California Railway Company, a corporation of the State of Utah, authorized to build railroad in the State of Utah, but not in the States of Nevada or lifornia.

(g) The said the San Pedro, Los Angeles and Salt Lake Railroad mpany had not at said time located any line of railroad or acired any rights of way or done any work of constructing a railroad

easterly or northerly of Riverside, California, a distance of [illegible] miles from Los Angeles, and said Utah and California Railway Company had not at said time located any line of railroad or acquired any rights of way or done any work of constructing a railroad.

(h) Soon after the incorporation of said the San Pedro, Los Angeles and Salt Lake Railroad Company it attempted to seize and appropriate to its own use the right of way across the State of Nevada and the partially completed grade between Calientes and Pioche, located and constructed by the Oregon Short Line and Utah Northern Railway Company as hereinbefore alleged, and then owned by the Utah, Nevada and California Railroad Company; and to that end said the San Pedro, Los Angeles and Salt Lake Railroad Company ran surveys over the said lines and prepared maps and profiles adopting the same as its own and attempted to file the same in
1009 the local land office of the United States in Nevada for the purpose of securing the right of way and also acquired a pretended tax title thereto from Lincoln County, Nevada, and also attempted by its laborers and other employees to seize and take forcible possession of the same.

(i) Thereupon and in order to protect its possession of and title to said grade and right of way across the State of Nevada, said Utah, Nevada and California Railroad Company commenced in the Circuit Court of the United States for the District of Nevada a suit against said the San Pedro, Los Angeles and Salt Lake Railroad Company and said Utah and California Railway Company and others, and upon the hearing of said cause an injunction was issued restraining and enjoining the said defendants from interfering with the possession and rights of said complainant; and said Utah, Nevada and California Railroad Company in a suit against said the San Pedro, Los Angeles and Salt Lake Railroad Company and others in Lincoln County, Nevada, procured a decree canceling and setting aside the said pretended tax title of the defendant the San Pedro, Los Angeles and Salt Lake Railroad Company; and the contests in the land offices of the United States between said Utah, Nevada
1010 and California Railroad Company and said the San Pedro, Los Angeles and Salt Lake Railroad Company and said Utah and California Railway Company involving the said right of way were finally decided by the Secretary of the Interior in favor of the said Utah, Nevada and California Railroad Company.

(j) As a result of such decisions, rendered prior to the execution of the contract, "Exhibit A" to the petition, herein on July 9, 1[illegible] the defendant Oregon Short Line Railroad Company and said Union and Pacific Railroad Company and said Utah, Nevada and California Railroad Company, controlled by it, established their right to the partially completed railroad and the located line and right

ray therefor from Salt Lake City, Utah, to the boundary lines between the States of Nevada and California and were rapidly proceeding with the completion of said line to Los Angeles, while the said the San Pedro, Los Angeles and Salt Lake Railroad Company had in operation only the aforesaid line from San Pedro to Los Angeles and branches from Los Angeles to Pasadena and Glendale.

(k) And these defendants are informed and believe, and upon such information and belief allege, that defendant the San Pedro, Los Angeles and Salt Lake Railroad Company would 1011 never have undertaken the construction of a line of railroad from Los Angeles to Salt Lake City, except for its expectation and belief, and the expectation and belief of the defendant Clark, that it could acquire without compensation the right of way and partially constructed line located and constructed as aforesaid by the Oregon Short Line and Utah Northern Railway Company from Milford through Utah and across the State of Nevada to the California boundary line, and that defendant Oregon Short Line Railroad Company would not extend the said line by construction from Milford to Los Angeles; and that when it appeared from the contests, suits, and decisions aforesaid that the said right of way and partially completed grade could not thus be acquired, and that defendant Oregon Short Line Railroad Company would construct and extend its own line from Milford to Los Angeles, the said the San Pedro, Los Angeles and Salt Lake Railroad Company and the said Clark would have abandoned the previously conceived purposes and intention to construct and establish a line of railroad from Los Angeles to Salt Lake City, but for the ability to negotiate and execute the contract "Exhibit A" to the petition herein providing for the construction and establishment of such a line under the terms and 1012 conditions in said contract set forth.

(6) They deny that the said "Exhibit A" to the petition or that anything done in executing and carrying out the same has suppressed, restrained, or in any manner restricted any commerce among the several States or with foreign countries.

(7) They deny that the aforesaid act of Congress approved July 2, 1890, or any other law of the United States, was intended to or could constitutionally prohibit the making or carrying out of such agreement and contract, and aver that the construction of railroads in the States of Utah, Nevada, and California by the corporations of said States, respectively, or by corporations of other States authorized by the said States to exercise their corporate powers therein, and all agreements relating to the construction or the abandonment of the construction of such railroads are matters wholly to be dealt with by the laws of the said States respectively; and any act of Congress intended or construed to prohibit or regulate or in any man-

ner interfere with such contracts, corporate powers, and matters in in excess of the powers of Congress under the Constitution of the United States, and is therefore void.

(8) They aver that although prosecuted diligently after
1013 the making of said contract, "Exhibit A" to the petition, the work of constructing the said railroad from Milford to Los Angeles was not completed and the said line opened for business until the first day of May, 1905; and these defendants aver that on the 9th day of July, 1902, when the said agreement was made and entered into, there was not then and from the nature of the work to be done there could not for several years be any competition of any kind between the parties to the said agreement in the transportation of commerce; and the possibility or probability of any such competition and of any restraint or restriction thereon was too remote and contingent to be prohibited by or to come within the provisions of the said act of Congress approved July 2, 1890.

(9) They aver that the said contract, "Exhibit A" to the petition, was made and entered into on the 9th day of July, 1902, and not afterward, and they aver that by reason of the premises the right to maintain this suit and all right of action or prosecution by the Government of the United States for or on account of said contract or for or on account of any of the matters and things alleged in Subdivision VI of the petition, accrued, if at all, more than three years and more than five years next before the commencement of this
1014 suit and is therefore barred by the statutes of the United States in such cases made and provided, and all right of the petitioner to relief herein is barred by the said statutes.

VII. (1) These defendants are without any knowledge respecting the purchase of shares of the Atchison, Topeka and Santa Fe Railway Company by defendants Harriman, Schiff, Kahn, Stillman, Rogers, and Frick, or any of them, and of any conspiracy or combination between the defendants last mentioned for the purchase of such stock or for any other purpose, and of the election of defendants Frick and Rogers as directors of the Atchison, Topeka and Santa Fe Railway Company, and of the reasons for such election.

(2) They admit that during the year 1906 defendant Oregon Short Line Railroad Company purchased $10,000,000 par value of the preferred stock of the Atchison, Topeka and Santa Fe Railway Company, which it still owns, and they aver that neither of the defendants has ever owned any other stock of the Atchison, Topeka and Santa Fe Railway Company; and they also aver that the capital stock of the Atchison, Topeka and Santa Fe Railway Company outstanding at the time of such purchase was, and still is, of the
1015 aggregate par value of $216,199,530.

(3) They deny that in the purchase of said stock or otherwise these defendants, or either of them, conspired or combined, or have ever conspired or combined, with the defendants Harriman, Schiff, Kahn, Stillman, Rogers, and Frick, or any of them, for the purchase of stock of the Atchison, Topeka and Santa Fe Railway Company, or to restrain trade and commerce among the several States and with foreign nations, or to monopolize, or attempt to monopolize, such trade and commerce, or to restrain and prevent competition among any railroad systems, or for any other purpose alleged or mentioned in the petition herein.

(4) They deny that the lines of railroad of the Atchison, Topeka and Santa Fe Railway Company are operated in harmony with the lines of defendant Union Pacific Railroad Company and of the Southern Pacific Company under agreements and understandings as to rates and divisions of business, and that competition between such lines has been eliminated or in anywise restricted.

(5) They are without knowledge of any agreements between the Southern Pacific Company and the Atchison, Topeka and Santa Fe Railway Company respecting the extension or abandon-
1016 ment of the extension of their lines in California, and are without knowledge of the incorporation of the "Northwestern Pacific Railway Company" and of the ownership of its stock.

(6) They deny all the other allegations of Subdivision VII of the petition.

VIII. And these defendants deny all and all manner of unlawful combination and confederacy wherewith they are by the said petition charged without this, that if there is any other matter, cause, or thing in the petition contained material or necessary for these defendants to make answer unto and not herein or hereby well and sufficiently answered, confessed, traversed, and avoided or denied the same is not true to the knowledge or belief of these defendants, all of which matters and things these defendants are ready and willing to aver, maintain, and prove as this honorable court shall direct and humbly pray to be hence dismissed with their reasonable costs and charges in their behalf most wrongfully sustained.

UNION PACIFIC RAILROAD COMPANY,
By JOHN W. BALDWIN, *Its Solicitor.*

1017 THE OREGON RAILROAD AND NAVIGATION COMPANY,
By WILLIAM W. COTTON, *Its Solicitor.*

OREGON SHORT LINE RAILROAD COMPANY,
By P. L. WILLIAMS, *Its Solicitor.*

P. L. WILLIAMS,
ROBERT S. LOVETT,
Of Counsel.

1018 The joint and separate answer of the defendants, William A. Clark and of the San Pedro, Los Angeles and Salt Lake Railroad Company, to the original bill of the United States of America filed herein. (Filed April 6, 1908.)

1019 In the Circuit Court of the United States for the District of Utah. No. 933. In equity.

The United States of America, complainant, vs. Union Pacific Railroad Company; Oregon Short Line Railroad Company; the Oregon Railroad and Navigation Company; The San Pedro, Los Angeles and Salt Lake Railroad Company; The Atchison, Topeka and Santa Fe Railway Company; Southern Pacific Company; Northern Pacific Railway Company; Great Northern Railway Company; Farmers' Loan and Trust Company; Edward H. Harriman; Jacob H. Schiff; Otto H. Kahn; James Stillman; Henry H. Rogers; Henry C. Frick, and William A. Clark, defendants.

1020 The joint and separate answer of the defendants, William A. Clark and of the San Pedro, Los Angeles and Salt Lake Railroad Company, to the original bill of the United States of America filed herein.

These defendants, now and at all times hereafter saving to themselves all manner of benefit and advantage of exception which can or may be taken to the errors, uncertainties, and other imperfections in the complainant's bill contained, or to so much and such parts thereof as these defendants are advised it is material or necessary for them to make answer unto, answering, say:

I. They admit that the defendant, the San Pedro, Los Angeles and Salt Lake Railroad Company, is now and since about the first day of May, 1905, has been a common carrier engaged in the transportation of freight and passengers within the States of California, Nevada, and Utah, and between the termini of its railroad at San Pedro, in the State of California, and at Salt Lake City, in the State of Utah; and since that time has participated in the transportation of freight and passengers under joint and through tariffs made effective therefor according to law, over the lines of railroad
1021 owned by the Union Pacific Railroad Company, Oregon Short Line Railroad Company, Denver and Rio Grande Railroad Company, and to a limited extent in southern California with the Southern Pacific Company and the Atchison, Topeka and Santa Fe Railway Company, and among the several States of the United States into and through which the transportation lines owned and operated by said companies, respectively, and not further or other

rise, and to that extent the defendant San Pedro, Los Angeles nd Salt Lake Railroad Company is now and since about May 1st, 905, has been engaged in trade and commerce among the several tates and with foreign nations.

II. For answer to the second paragraph of complainant's bill, hese defendants say that they have no knowledge, information, or elief in respect to said several matters in said second paragraph lleged except the statements and allegations of the complainant ontained in said paragraph; wherefore these defendants neither admit nor deny the same, but leave the complainant to make such proof s it may see proper or be advised.

III. For answer to the third paragraph of complainant's
022 bill, or to so much thereof as these defendants are advised it is material or necessary for them to make answer to, they admit hat the defendant San Pedro, Los Angeles and Salt Lake Railroad Company is now the owner of or operates a line of railroad extending from East San Pedro, a port on the Pacific Ocean, in the State of California, and thence by way of Los Angeles through the States of California and Nevada and into the State of Utah to the city of Salt Lake, in said State of Utah; that the said company is also the owner of certain branch lines of railroad extending from Los Angeles, in California, to Glendale and Pasadena; that that part of its said line of railroad lying between Riverside Junction and Colton and San Bernardino is used and operated under a lease whereby the right to use the tracks of said Southern Pacific Company between said points is conferred upon defendant, San Pedro, Los Angeles and Salt Lake Railroad Company; and that a portion of the track of the Atchison, Topeka and Santa Fe Railway Company extending from Colton through San Bernardino and Barstow to Daggett, in California, is operated upon by the said San Pedro, Los Angeles and Salt Lake Railroad Company by virtue of a certain lease whereby the joint use of that portion of the tracks of said Atchison, To-
1023 peka and Santa Fe Railway Company is granted for a term of years to the said San Pedro, Los Angeles and Salt Lake Railroad Company. They admit that the remainder of the line of railroad from San Pedro to Salt Lake City aforesaid is owned by the said San Pedro, Los Angeles and Salt Lake Railroad Company, and that the entire line constitutes a continuous line of railroad between said points. They admit and aver that the line of railroad of the said San Pedro, Los Angeles and Salt Lake Railroad Company was completed between its said termini on or about the first day of May, 1905, and also admit and aver that it has been at all times since its completion, through its connection with the Oregon Short Line Railroad Company at Salt Lake City and also by and through a connection which it has and maintains with the Denver and Rio Grande

Railroad Company at Salt Lake and at Provo, in Utah, a competing with the Southern Pacific Company.

They deny that there is or has been for any reason or by any cause any suppression of competition by any act or thing done or suffered to be done by the said San Pedro, Los Angeles and Salt Lake Railroad Company in its relation to any traffic having origin or destination upon or beyond the lines of railroad owned and operated
1024 by the said San Pedro, Los Angeles and Salt Lake Railroad Company or any other traffic.

IV. For answer to the fourth paragraph of complainant's bill these defendants say that they have no knowledge, information, or advice save that contained in the several allegations of said Paragraph IV of complainant's bill, and for want of such information or knowledge these defendants are unable specifically to admit or deny the several allegations therein contained, and leave the complainant to make such proofs as it may be advised.

V. For answer to the fifth paragraph of complainant's bill, these defendants say that they have no knowledge, information, or advice save that contained in the several allegations of said Paragraph V of complainant's bill, and for want of such information or knowledge these defendants are unable specifically to admit or deny the several allegations therein contained, and leave the complainant to make such proofs as it may be advised.

VI. For anwser to the sixth paragraph of complainant's bill these defendants aver that prior to the twentieth day of
1025 March, 1901, there existed in the State of California a certain railroad corporation known as the Los Angeles Terminal Railway Company, which owned and operated a line of railroad extending from East San Pedro, bordering upon the harbor of San Pedro in California, to Los Angeles, California, with a branch line extending from Los Angeles to Pasadena, and with another branch line extending from a point on the last-named branch to a terminus at Verdugo in California, in all about 45 miles of railroad; and

That there also existed a corporation known as the Los Angeles Terminal Land Company, which owned certain lands at and near the terminus of said railroad at San Pedro, California;

That there also existed at the same time a corporation known as the California Improvement Company, the same being a corporation organized under the laws of the State of Illinois, which was the owner of the stocks of the first two mentioned corporations; and

That within a few months prior to said March 20th, 1901, the stock and interests in said corporations were owned by defendant Clark and certain other persons;

That said persons, owners of the stock of the said several
1026 corporations above named, about March 12th, 1901, caused

articles of association to be made for the creation of a corporation to be known as the San Pedro, Los Angeles and Salt Lake Railroad Company, which articles of association were duly executed; and on March 20th, 1901, filed in the proper offices in the State of Utah, whereby the said San Pedro, Los Angeles and Salt Lake Railroad Company became on March 20th, 1901, legally incorporated under the laws of the State of Utah;

That in compliance with the laws of the State of Nevada, and to enable it to own and acquire a railroad in the State of Nevada, the said San Pedro, Los Angeles and Salt Lake Railroad Company, on April 8th, 1901, filed its articles of incorporation, duly certified, in the proper offices in the said State of Nevada; and

That on the thirteenth day of April, 1901, in order to comply with the laws of the State of California, the said San Pedro, Los Angeles and Salt Lake Railroad Company filed duly certified copies of its articles of incorporation in the office of the secretary of state of the State of California, and that it filed its articles of incorporation in the county of Los Angeles, in said State, on the fifteenth day
1027 of April; in the county of San Bernardino, on the tenth day of December, 1901; and in Riverside County in California on the tenth day of April, 1902.

These defendants allege that the purpose of said incorporators who created the said corporation was duly expressed by them in the articles of incorporation of said company; and that the corporate powers and the business and purposes of said corporation were duly expressed in the said articles of incorporation under which the said San Pedro, Los Angeles and Salt Lake Railroad Company, among other things, was given power "to own and operate a main line of railroad from Salt Lake City, in the State of Utah, through the following counties in the said State: Salt Lake, Utah, Tooele, Juab, Millard, Beaver, and Iron; also through Lincoln County in Nevada, and also through the counties of San Bernardino, Riverside, Orange, and Los Angeles, in California, to a terminal point on the harbor of San Pedro, in Los Angeles County, California"; and it also thereby had power to construct, own, and operate certain branch lines of railroad particularly described in its said articles; and thereby it also had power "to buy, own, maintain, operate, and further extend" the railroad rights, properties, and franchises in the
1028 State of Utah, which are so located as to be conveniently appropriated as a part of the main line of its said railroad, or as branch lines thereof; and to purchase like properties in the State of Nevada and the State of California; and particularly to purchase the railroad properties and franchises of the Los Angeles Terminal Railroad Company; and to build and operate certain extensions and branches more particularly described in said articles; and to acquire

real estate for the operation of wharves on navigable waters; and also to operate a telegraph line and own and hold water rights, lands, and materials necessary for the purposes of the corporation. It also had power "to purchase or otherwise acquire and own" the capital stock or securities, or any part of the capital stock or securities, of any other railroad corporation or corporations.

These defendants submit that the purpose for which the said San Pedro, Los Angeles and Salt Lake Railroad Company was organized and created is fully and particularly specified and set forth in its said articles of incorporation, reference to which is hereby made and prayed to be considered herein, specifically set forth, and the same will be shown and exhibited upon the hearing of this cause; and

These defendants expressly deny that the alleged purpose
1029 set forth in the first clause of the sixth paragraph of complainant's bill was or is a true statement of the purpose of the said San Pedro, Los Angeles and Salt Lake Railroad Company or of its incorporators, and alleges that its only purpose was that expressed in its said articles of incorporation.

These defendants admit that the said San Pedro, Los Angeles and Salt Lake Railroad Company acquired a line of railway from San Pedro to Los Angeles, which, defendants aver, was by and through a conveyance of the properties of the Los Angeles Terminal Railway Company, which conveyance was delivered to and accepted by the said San Pedro, Los Angeles and Salt Lake Railroad Company on March 21st, 1901, under which the said San Pedro, Los Angeles and Salt Lake Railroad Company became the owner of a line of railroad extending from East San Pedro aforesaid through Los Angeles to Pasadena and Glendale, as above mentioned.

In respect to the allegation of said bill that the defendant San Pedro, Los Angeles and Salt Lake Railroad Company was "engaged in the construction of the balance of its line when the defendants Harriman, Schiff, Kahn, Stillman, the Union Pacific Railroad Company, and Oregon Short Line Railroad Company, for the sole
1030 purpose of restraining trade and commerce among the States and with foreign nations and monopolizing same, as hereinbefore more particularly set forth, and of preventing competition between said railways then in process of construction; and the said Union Pacific Railroad system, including said Southern Pacific system, brought suits of various kinds in the courts for the purpose of harassing and injuring the said railway company and preventing the acquisition of the necessary right of way for the same; put large gangs of men at work to interfere with and prevent construction of the said line; threatened said Clark and his associates in the said San Pedro, Los Angeles and Salt Lake Railroad Company that if said line was completed the same would be paralleled by the Oregon

Short Line, its value would be destroyed, and its ability to secure business or operate at a profit would be taken away, which said threats, litigation, and other interference were continued for a period of many months"; these defendants deny the said several allegations and each of them, and aver the truth to be, in respect of said several allegations, that a controversy did arise about April 1st, 1901, between the said San Pedro, Los Angeles and Salt Lake Railroad Company and the said Oregon Short Line Railroad Company,
1031 and one of its auxiliary and subsidiary companies known as the Utah, California and Nevada Railroad Company. The said controversies were with respect to the conflicting rights and claims of said companies to a certain right of way for a railroad extending from the eastern boundary of the State of Nevada, beginning at a point known as Uvada, in Lincoln County, in said State; thence in a southwesterly course across the State of Nevada to the southwestern boundary thereof; and also a branch line of the railroad right of way extending from a point upon the line above described, designated and known as Clover Valley Junction, said point being distant about forty miles southwesterly from said Uvada, the point of beginning of the above-described line, and extending thence in a northerly or northwesterly direction to the town of Pioche, in Lincoln County, in the said State, a distance of about thirty miles.

The contention and claim of the said Oregon Short Line and its said auxiliary company was based upon and grew out of a certain law in the United States entitled, "An act granting to railroads the right of way across the public land of the United States," approved March 3, 1875, the title and claim of the said Short Line Company being substantially as follows:

1032 The Nevada Pacific Railway Company was a corporation created in the year 1889, existing under the laws of the State of Nevada, and its franchise authorized it to construct a railroad connecting with the railroad of the Utah Central Railway Company's railroad at a point on the eastern boundary of the State of Nevada, now known as Uvada, near Pioche in Lincoln County, Nevada, and extending thence in a southwesterly course across the said State of Nevada to the western boundary line of the said State, with two branch lines thence extending into the counties of White Pine and Nye.

That on the twenty-seventh day of July, 1889, the said Nevada Pacific Railway Company, together with the Oregon Short Line Railroad Company, the Utah and Northern Railway Company, and other railroad corporations of the States of Utah, Idaho, and of the United States, pursuant to lawful authority, made and entered into certain articles of consolidation and agreements, whereby said

several corporations agreed to and with each other to unite and consolidate and to unite, form, and consolidate their respective organizations, capital stock railroads and franchises of every nature and description into one company, to continue in existence for a period of fifty years, and to be called and known as "Oregon
1033 Short Line and Utah Northern Railway Company."

For a more particular and complete statement of the terms and conditions of the said articles of consolidation, reference is hereby made to the same, which will be exhibited to this honorable court in due course.

That in the years 1889 and 1890 said Oregon Short Line and Utah Northern Railway Company resolved to construct its railroad upon its right of way from Milford, in the State of Utah, to a point now known as Uvada, on said line, and thence into Lincoln County, Nevada, upon the line authorized under the charter privileges prior to the execution of said agreement of consolidation and owned and enjoyed by the said Nevada Pacific Railway Company.

That in pursuance of said determination the said Oregon Short Line and Utah Northern Railway Company adopted its line of railroad and located the same, caused a copy of its articles of incorporation and due proof of its organization under the same and maps and profiles showing its line of railroad as located and adopted by it to be filed with the local land offices of the United States in Nevada and Utah and to be forwarded therefrom to the Secretary of the Interior, and also caused maps and profiles of the line of its
1034 railroad from Milford, Utah, to the Utah-Nevada State line at the point now known as Uvada, and also from the said last-named point southwesterly, through the State of Nevada, to the southwestern boundary thereof, and also extending from a point upon said line then known as and called Clover Valley Junction, but now Caliente, and extending thence in a northerly or northwesterly direction to the town of Pioche, in Lincoln County, in the said State, a distance of about thirty miles, to be duly prepared and submitted to the proper officers of the Land Department of the United States, and thereupon said maps and profiles were by said officers and by the Secretary of the Interior of the United States duly approved, all in conformity with the terms and provisions of the aforesaid act of Congress of the United States and pursuant to the regulations and requirements of the Secretary of the Interior of the United States; and that thereby the said Oregon Short Line and Utah Northern Railway Company claimed to have become fully possessed of the ownership of the said railway shown and indicated upon said maps and profiles between the eastern boundary of the State of Nevada and southwesterly boundary of the said State, and also upon said branch line from Clover Valley Junction to Pioche aforesaid and

1035 shown upon said maps and profiles of said railroad and as approved by the Secretary of the Interior of the United States.

That the right, title, and interest so acquired by the said Oregon Short Line and Utah Northern Railway Company had not been forfeited by the United States or by any act of Congress thereof, nor by any proceedings under the direction of Secretary of the Interior or by *quo warranto* nor any other proceeding whatsoever, nor in any way or manner; but the same was claimed as a valid subsisting vested right, title, and ownership in the said right of way, and the grade thereon constructed by said Oregon Short Line and Utah Northern Railway Company and its assigns.

That during the year 1890 the said Oregon Short Line and Utah Northern Railway Company entered upon the construction of its said line of railway from Milford, in the State of Utah, to the Nevada State line, and from said State line into and through Lincoln County, Nevada, including the said branch line from Clover Valley Junction to Pioche, and expended in constructing the roadbed and embankments, including bridges, tunnels, and work within and upon said right of way, in all about the sum of one million dollars, of which sum about six hundred and ninety thousand

1036 dollars was expended upon that portion of the right of way in Lincoln County, Nevada, in the construction of grade, embankments, cuts, tunnels, and work in and upon said right of way from Uvada aforesaid southwesterly along the main line of said railway to Clover Valley Junction, a distance of about forty miles, and from said last-named point northerly or northwesterly upon said branch line to or near the said town of Pioche, a distance of about thirty miles.

That in the year 1891, after expending said sums of money, the said Oregon Short Line and Utah Northern Railway Company became embarrassed financially and was unable to prosecute said work to completion, and for said reason suspended the prosecution of said work.

That all the properties of the Oregon Short Line and Utah Northern Railway Company, including the properties above mentioned and described, about August 1st, 1889, were mortgaged by the said Oregon Short Line and Utah Northern Railway Company to the American Loan and Trust Company of Boston.

That in the 1895 the said company, being in default in the payment of its indebtedness, secured by said mortgage and other mortgages upon its property, the American Loan and Trust Com-

1037 pany, trustee of the said consolidated mortgage, brought its bill to foreclose the same in the Circuit Courts of the United States; and thereafter in said suit such proceedings were had that a decree of foreclosure and sale was duly entered thereon, and the

said property embraced in the said mortgage was duly sold by pro-
ceedings under said decree of foreclosure and thereafter duly con-
veyed to the Oregon Short Line Railroad Company by the master
under the terms and directions of said decree; and that in making
execution and delivery of the conveyance of said properties the said
Oregon Short Line and Utah Northern Railway Company duly
joined, and the purchaser at said foreclosure sale was duly let into
the possession thereof, under the terms of said decree of foreclosure
and sale, on or about March 15th, 1897.

The said Oregon Short Line Railroad Company, the purchaser of
the property of the said Oregon Short Line and Utah Northern Rail-
way Company, was a corporation of the State of Utah, organized as
such on the ninth day of February, 1897, and had power to acquire,
own, operate, enjoy, maintain, and further extend all of the lines
of the railroad right of way and property formerly owned and en-
joyed by the said Oregon Short Line and Utah Northern Railway
Company.

That in the year 1896, pending the foreclosure proceed-
1038 ings above mentioned, there was formed in the State of Utah a
corporation known as the Utah and California Railway Com-
pany, which had power by its original articles of incorporation to
construct, own, and operate a railroad from Salt Lake City, in the
State of Utah, to St. George, in the State of Utah; and that by an
amendment to the said articles the said company was empowered to
construct a branch line from a point at or near Milford, Beaver
County, Utah, a station on the Oregon Short Line and Utah North-
ern Railway Company, as then constructed, and continuing to the
Utah-Nevada State line at a point now known as Uvada.

Said Utah and California company caused maps of its proposed
railroad to be prepared and submitted to the proper land officers of
the United States for its line of railroad, as shown upon said maps
extending from Milford station to Uvada, in the State of Utah, which
said line of its railroad was identical with the constructed roadbed
and right of way line of said Oregon Short Line and Utah Northern
Railway Company; and

The said Utah and California company caused to be prepared maps
and profiles of a proposed railroad line extending from the
1039 boundary line between the said States of Utah and Nevada
from Uvada into and through Lincoln County, in the State
of Nevada, for a distance of about forty miles, to a point known as
called Clover Valley Junction; and also northerly from said point for
a distance of about thirty miles to Pioche, which said maps and pro-
files were for a right of way identical with and laid upon the right
of way and railroad grade and embankments and embraced in the
maps and profiles and right of way of said Oregon Short Line as

Utah Northern Railway Company hereinbefore described; and it caused said maps and profiles covering the said line within the State of Nevada to be deposited with the said land office of the United States for the district of Nevada for approval by the Secretary of the Interior.

That none of the said maps and profiles so filed by the Utah and California Railway Company over the said line within the States of Utah and Nevada were ever approved by the Secretary of the Interior; and that no title to the said right of way shown upon such maps was ever acquired by the Utah and California Railway Company.

That the said articles of incorporation and corporation franchise of the said Utah and California Company did not at the time
1040 aforesaid embrace any right, franchise, or power to construct, maintain, or operate a railroad for any distance whatsoever, or at all, within the State of Nevada.

And the said Utah and California Railway Company had not at the time of making and depositing its said maps and profiles upon the said line in the State of Nevada any right, franchise, or power whatsoever under which it could make, construct, or operate a railroad in the State of Nevada, nor under which it could, according to the laws of the said State of Nevada, acquire any right to construct, maintain, and operate a railroad in said State.

That in the year 1898 the Oregon Short Line Railroad Company made a certain agreement with one McCune and his associates providing that they should organize a company to be known as Utah and Pacific Railroad Company, to build, construct, maintain, and operate a railroad from Milford station, on the line of the said Oregon Short Line Railroad Company in Beaver County, Utah, to Nevada, on the Nevada State line.

In said agreement the Short Line Company reserved to itself the option to purchase and take over from said McCune and others the majority of the capital stock and securities of the said Utah and Pacific Company.

1041 That pursuant to said agreement a corporation of the State of Utah was organized by the name last aforesaid, and the line of the railroad from Milford to Uvada was by it constructed.

That the Utah and California Railway Company waived its preferred rights under its said filing of maps and profiles in favor of the said Utah and Pacific Railroad Company, and consented that the Utah and Pacific Railroad Company should construct, maintain, and operate its railroad upon said right of way; and

That the said Oregon Short Line and Utah Northern Railway Company and said Oregon Short Line Railroad Company assigned and trans-

ferred their rights to said right of way and railroad grade betwe
said points to said Utah and Pacific Railroad Company, and the sa
railroad of the Utah and Pacific Railroad Company was construc
and operated from Milford to Uvada aforesaid upon a right of w
duly approved to it by the United States and identical with the orig
nal right of way approved by the United States to said Oregon Sho
Line and Utah Northern Railway Company.

That said Oregon Short Line Railroad Company acquired all th
stock, bonds, and securities of said Utah and Pacific Railro
1042 Company and was possessed thereof and operated said ra
road to Uvada as aforesaid.

That at the time said controversies arose the line of the railroad
the Oregon Short Line Railroad Company operated by it, includi
the said Utah and Pacific Company, extended from Salt Lake Ci
in the State of Utah, continuously to said Uvada, a distance of
miles, and at Uvada connected with the railway right of way f
merly owned by the Oregon Short Line and Utah Northern Railw
Company and extended into and through Lincoln County, Nevada, a
it was engaged in collecting material for and in preparation for co
tinuing the construction of a railroad upon the said line of right
way into and through Lincoln County, Nevada, including said bra
line to Pioche.

On the second day of February, 1898, the Utah, Nevada and C
fornia Railroad Company was organized in and under the laws
the State of Nevada as an auxiliary company of the Oregon Sh
Line Railroad Company for the purpose of constructing a railr
from the eastern boundary of the State of Nevada, from a point n
Uvada aforesaid, southwesterly across the State of Nevada to
southwestern boundary of said State, with a branch line extend
from a point on the aforesaid main line of railroad, ea
1043 Clover Valley Junction, and about forty miles southwes
from the said boundary line between the State of Utah
Nevada, and extending thence in a northerly and northwesterly di
tion a distance of about thirty miles to the town of Pioche, in Lin
County, Nevada, and for the purpose of utilizing, using, and occ
ing the line of right of way and railroad grade of the said Or
Short Line and Utah Northern Railway Company hereinbefore
ferred to, but to so occupy the same with the consent of the Or
Short Line and Utah Northern Railway Company aforesaid, an
assignee, the Oregon Short Line Railroad Company.

That all of the capital stock of said Utah, Nevada and Calif
Railroad Company was owned by said Oregon Short Line Rail
Company.

That after its organization the said Utah, Nevada and Calif
Railroad Company duly adopted and located its line of railroa

caused to be prepared maps and profiles of its said line of railroad showing the line thereof across the public lands of the United States from Uvada to Clover Valley Junction, a distance of about forty miles, the same being identical with the line of right of way of said Oregon Short Line and Utah Northern Railway Company
1044 hereinbefore referred to and caused its said maps and profiles, together with copies of its articles of association and due proofs of its organization to be deposited in the proper land office in the State of Nevada under and as required by the regulations and requirements of the Department of the Interior prescribed under and by virtue of the act of Congress aforesaid; that by reason of the apparent conflict of location and claims of said several companies indicated in said several sets of maps the Department of the Interior required a hearing to be had before the said local land office in Carson City, Nevada, to determine the rights of said Utah, Nevada and California Railroad Company and of the Oregon Short Line and Utah Northern Railway Company and the said Utah and California Railway Company in respect to said location and right of way; that a hearing was had in said local land office pursuant to the direction of the Secretary of the Interior, but said local land office erroneously and wrongfully held that the grant to and right of way of the said Oregon Short Line and Utah Northern Railway Company under its said approved maps and location were forfeited because said line was not built within five years, and erroneously recommended that the maps and location of the said Utah and California Rail-
1045 way Company should be approved. Afterwards, on the twenty-fourth day of April, 1901, the Land Commissioner of the General Land Office, having before him by proper proceedings the record and testimony and the findings and recommendations of the local land office, did correct said error made by the local land office and recommended to the Secretary of the Interior that the said maps and profiles of said Utah and California Railway Company be disapproved, and the maps and profiles and "due proofs" presented by the said Utah, Nevada and California Railroad Company were approved by the Secretary of the Interior of the United States on the twenty-fifth day of April, 1901.

That the said Utah and California Railway Company, after the filing of its said maps and due proofs as aforesaid, and on December 8th, 1900, at a meeting of its stockholders amended its articles of association so as to create a right, power, and franchise for it to build, construct, maintain, and operate a railroad in the State of Nevada, but did not file its said amended articles of association in the State of Nevada until the eighth day of April, 1901.

That about the first day of April, 1901, by reason of the failure of the Oregon Short Line Railroad Company to build and com-

1046 plete the said railroad within five years from the date of the
approval of the said maps and profiles first filed by the Ore-
gon Short Line and Utah Northern Railway Company as aforesaid,
and because of the approval of the maps and profiles of the Utah
and California Railway Company by the local land office, and be-
cause of refusal of the approval by the local land office of the maps,
profiles, and due proofs theretofore filed by said Utah, Nevada
and California Railroad Company, the said San Pedro, Los An-
geles and Salt Lake Railroad Company, having at that time obtained
the consent of the Utah and California Railway Company and con-
trol of said company by ownership of its stock, was advised that the
said line of right of way was owned by it and lawfully appropriated
by said Utah and California Railway Company and its assigns, un-
dertook to enter upon the said right of way, grade, roadbed, tunnels
and improvements made and constructed as aforesaid, and to take
hold and appropriate the same under its supposed rights under the
Utah and California Railway Company and under its own charter, and
that thereupon the Utah, Nevada and California Railroad Company
being engaged in the construction of its line of railroad southwesterly
from Uvada, a direct conflict arose between the agents and servants
of the respective companies.

1047 That in order to quiet the same and to settle the rights and
interests of the respective claimants to said right of way, a suit
was brought in the Circuit Court of the United States for the Dis-
trict of Nevada by the Utah, Nevada and California Railroad Com-
pany against the Utah and California Railway Company, the Empire
Construction Company, the San Pedro, Los Angeles and Salt Lake
Railroad Company, C. O. Whittemore, T. E. Gibbon, J. Ross Clark,
Adam Paul, Virgil Kelley, H. B. Maxson, in which suit the the com-
plainant alleged the facts hereinbefore set out; that in said suit the
complainant therein, the Utah, Nevada & California Railroad Com-
pany afterwards filed a supplemental bill alleging that the Utah &
California Railway Company had made some sort of contract or
agreement whereby it conveyed or agreed to convey to the said San
Pedro Company some right, title, estate, or interest in and to the
said railroad grade and roadbed hereinbefore described. It also
alleged in said supplemental bill the filing by it of maps, profiles,
and due proofs for its branch line extending from Clover Valley
Junction to the town of Pioche, in the State of Nevada; also the sur-
veying and adoption of its line of railroad from Clover Valley Junc-
tion southwesterly across the State of Nevada to the western
1048 boundary thereof, and that it had caused maps and profiles of
its line of right of way, as adopted by it for that part of its
proposed line southwesterly from Clover Valley Junction across the
State of Nevada to the western boundary of said State, to be sur-

itted to the Secretary of the Interior for his approval; that it had
ly adopted the line of right of way described upon and embraced
said maps by due corporate action by its board of directors, and
at it had continuously prosecuted the work of construction of its
ilroad upon the line of railroad right of way indicated and shown
on its said several maps and profiles, and that it then had in opera-
on twenty-three miles of railroad in and upon its said main line
right of way from the Utah-Nevada State line in the direction and
wards Clover Valley Junction aforesaid, and that it had on hand
ack material and was actively and earnestly prosecuting the work
construction of said line of railroad through Clover Valley Junc-
on and toward the western boundary of the State. It alleged the
try upon its line of railroad by the said San Pedro, Los Angeles
d Salt Lake Railroad Company and the attempted location of a
ght of way for the benefit of the said San Pedro, Los Angeles and
Salt Lake Railroad Company, and alleged its claim to right
949 and title to the entire line of right of way and the interference
therewith from Uvada westward by the agents and servants
the said San Pedro, Los Angeles and Salt Lake Railroad Com-
ny, and alleged and claimed title to the whole of the said line of
ght of way, and prayed that the claim of right and title asserted by
e said San Pedro, Los Angeles and Salt Lake Railroad Company
ereto be quieted and its possession and right of possession be con-
med to it.

That in said suit answers were filed by the defendants in said suit,
cluding the said San Pedro, Los Angeles and Salt Lake Railroad
ompany, and that a temporary injunction was issued and allowed
nder the said original bill.

In said suit the said San Pedro, Los Angeles and Salt Lake Rail-
ad Company filed its answer and cross bill to the said original and
id amended and supplemental bills, and denied either upon in-
rmation or directly the allegations thereof, and claimed that it
d the right to enter in and upon and to appropriate all the prem-
es claimed by the complainant in said suit, and by way of cross
mplaint in said proceedings alleged and set out its claim to all of
at part of the line of right of way for a railroad commencing
at Clover Valley Junction, extending thence in a southwesterly
050 direction through the Meadow Valley Wash to the Nevada-
California State line, a distance of about one hundred and
enty-five miles, and alleged the adoption by it of its line of
ght of way for its railroad, the filing by it of copies of its articles
f association, due proofs, maps, and profiles, as required by the laws
f the United States; denied the said complainant's adoption, loca-
ion, or filing of maps and profiles as to different portions of said
ne, and attacked the method of survey, location, and adoption of

route which had been made by the complainant, and charged that the said complainant's supposed line was not validly made, adopted, located, or proven; that on June 10th, 1901, it had commenced at Salt Lake City the survey and location of a part of its line from Salt Lake City by the most feasible and direct route through said State of Utah and into the State of Nevada to a point of connection with its said line of railroad surveyed, located, and adopted in the State of Nevada, and then had about eighty miles of said line surveyed and adopted; alleged that it had entered upon and taken possession of all of the railroad right of way from Clover Valley Junction to the Nevada-California State line, and that on May 6th it commenced the work of construction of its railroad upon said

1051 line, and that at a point about twenty-six miles southwesterly from Clover Valley Junction it had entered upon and commenced construction of its railroad line upon said disputed right of way, and alleged its purpose to continue to use and occupy said disputed right of way as the location for its line of railroad; that it was then engaged in surveying and locating a line for its railroad from the city of Los Angeles, in the State of California, to the Nevada-California State line; that it then had acquired and had in operation its railroad from San Pedro to the city of Los Angeles, a distance of 27 miles, and had acquired a system of railroads in the city of Los Angeles and extending into the surrounding country, consisting of three branch lines of standard-gauge railroad, aggregating in all about eighty miles of track; that it had expended in addition to the amount expended in acquiring the Los Angeles Terminal Railway's property, about five hundred thousand dollars; that it purchased rails for sixty miles of track, a large number of ties, was rebuilding its railroad between San Pedro Harbor and Los Angeles; that it had purchased from private owners nearly all the right of way for the first sixty miles of its railroad easterly from Los Angeles, and was engaged in securing the remainder right of

1052 way, and that it proposed to continue the same; that when the right of way was secured contracts for the grading of the first sixty miles of its line would at once be let and the railroad constructed thereon. It recited the purchase of equipment and preparations for construction; alleged that the complainant on July 29th had entered at Clover Valley Junction upon the said disputed right of way formerly owned by the Oregon Short Line and Utah Northern Railway Company, and forcibly took possession thereof and threatened to proceed along the said disputed right of way in the construction of its own railroad. By said cross bill the said San Pedro, Los Angeles and Salt Lake Railroad Company prayed, amongst other things, for the settlement of the title to the disputed

right of way, and that the complainant in said suit and all persons under them be enjoined from interfering with or occupying the said disputed right of way, and that the title thereof be declared to be in the said San Pedro, Los Angeles and Salt Lake Railroad Company, and that the title of the complainant, the Utah, Nevada and California Railroad Company, be quieted in the said San Pedro, Los Angeles and Salt Lake Railroad Company, and for relief by which the complainant would be excluded from any further right, title, or claim therein.

1053 The case was heard upon the issues as made up under the original bill, the supplemental bill, the cross bill, and the respective motions for injunction before the Honorable Thomas P. Hawley, judge of the said United States Circuit Court, on the 22d day of July, 1901, and the said complainants in the said original bill were granted an injunction restraining the Utah and California Railway Company and the San Pedro, Los Angeles and Salt Lake Railroad Company from interference with the line of right of way and railroad roadbed and grade from Uvada to Clover Valley Junction and thence to Pioche, and the court denied the prayer of the complainant for an injunction *pendente lite*, under its amended and supplemental bill, as to that portion of the line of right of way for a railroad southwesterly from Clover Valley Junction, and as the respective claims of the parties in respect thereto were yet pending before the Land Department of the United States left the decision of questions as to such rights to be further considered after the completion of the respective hearings in said Land Department of the United States.

1054 That the complainant in said suit, the Utah, Nevada and California Railroad Company, completed its line of railroad to Clover Valley Junction on or about the first day of August, 1901, and there was in operation by it and the Oregon Short Line Railroad Company at that time southwardly from Salt Lake by direct line about three hundred and twenty-four miles of railroad.

These defendants allege that after the said decision of the United States court for the district of Nevada the complainant in said suit and the said San Pedro, Los Angeles and Salt Lake Railroad Company each, by their separate corps of surveyors, surveyed and studied the country known as the Meadow Valley Wash, the then only known practicable route for a railroad southwesterly from Caliente, Nevada, for a distance of about one hundred and twenty-five miles, and which consists of a canyon carrying a mountain stream, the difficulties of railroad construction through which for even one line of railroad are from a physical standpoint very great, and thence across the desert to a junction with the line of railroad of the Atchison, Topeka and

Santa Fe Railway Company; that along the entire line of railroad through said Meadow Valley Wash and to a junction with the railroad of the Santa Fe Company there were almost no agricultural, live-stock, or mining interests or development, practically no local settlement, either actual or prospective, and the line of railroad between said points was through a canyon or a desert without any substantial showing for even a prospective local business.

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These defendants deny that they or either of them were at any time or in any manner or for any reason whatever induced to or did desist from and abandon their proposed intention of building a line of railroad such as was described and defined in the articles of association of the said San Pedro, Los Angeles and Salt Lake Railroad Company. They deny that the said Harriman and his associates and the said Oregon Short Line Railroad Company, on the one part, and defendant Clark and his associates upon the other part, then or at any time, combined and confederated together to suppress any competition either actual or proposed. They deny that the said Clark and his associates, upon the one part, or the said Harriman and his associates and the said Oregon Short Line Railroad Company then or at any time made or entered into any contract, agreement, or combination to in any manner maintain, continue, or extend the, or any, alleged restraint of trade mentioned in complainant's bill, or to maintain, continue, or extend any or the alleged monopoly. They deny that the said William A. Clark joined in the alleged or any conspiracy to suppress competition in any or all of the territory set forth or described in the complainant's bill, and deny that in pursuance of such alleged or any unlawful alliance with said, or any of said, alleged conspirators the said Clark entered into a certain agreement with the defendant Harriman under date of July 9th, 1902. They admit that the defendant Clark and the said Harriman did make a certain agreement, dated July 9th, 1902, and they admit that a copy thereof is annexed to the said complainant's bill, marked "Exhibit A." These defendants allege and aver that there was not at the time of the making of said agreement any continuous line of railroad extending from Salt Lake City in Utah to San Pedro via Los Angeles. They allege the truth to be that the only railroad constructed at that time was the railroad owned by the Oregon Short Line Railroad Company and its auxiliary company, the Utah, Nevada and California Railroad Company, which extended southerly from Salt Lake by direct line for a distance of about three hundred and twenty-four miles; that the said Short Line Company also owned and operated other branch lines of railroad south of Salt Lake City, including a cut-off then being constructed and known as the Lean-

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ington Cut-off, extending southerly from Salt Lake City through Stockton to Leamington Junction for a distance of about 200
1057 miles, making in all a constructed line of railroad and branch lines owned and operated by the said Short Line Company south of Salt Lake City, of about 525 miles; that the said San Pedro, Los Angeles and Salt Lake Railroad Company at that time owned in southern California a line of railroad with branches aggregating about eighty miles of constructed road, and was engaged in securing rights of way for the construction of its line of railroad and in constructing a road thereon from Los Angeles to Riverside, and that the amount of railroad thus under construction amounted to about sixty miles. It also claimed to have located a line for a right of way across Government land extending from Caliente to a junction with the Atchison, Topeka and Santa Fe Railway Company's line of railroad for about 300 miles, the title to which was in dispute.

These defendants allege and aver that the said San Pedro, Los Angeles and Salt Lake Railroad Company had not acquired nor located its line of railroad between said junction with the Santa Fe Railroad tracks and San Bernardino and Riverside, California. That the route from Daggett, the junction point with the Santa Fe Railroad aforesaid, passed over a range of mountains over the Cajon Pass for a distance of about eighty miles, which called for the
1058 crossing of a mountain of steep grades and which required very heavy, expensive construction work, and it had not acquired any right of way nor made any certain and definite plans for the construction of its line of road from San Bernardino to Riverside, California, nor yet between said Riverside and the said junction of the Santa Fe Railroad aforesaid.

The said San Pedro, Los Angeles and Salt Lake Railroad Company had failed to secure to itself the right and title to the line of right of way for a railroad, including the roadbed built thereon originally by the Oregon Short Line and Utah Northern Railway Company, and the right to the location of its entire line of railroad from Caliente southwesterly to a junction with the Santa Fe tracks as aforesaid, was in dispute in the Land Department of the United States; and the said San Pedro, Los Angeles and Salt Lake Railroad Company was advised that its right to recover in said proceedings was in grave doubt.

The premises and nature of the country considered, it had become apparent to the said San Pedro, Los Angeles and Salt Lake Railroad Company that for the entire distance from Caliente to a junction with the line of railroad of the Atchison, Topeka and Santa
1059 Fe Railway there was not then and apparently never could be any considerable or profitable amount of local business, and

that the line of railroad from Caliente northward existed in a country which promised much valuable local business between Salt Lake and Caliente; that the line of railroad owned and then being constructed by the said San Pedro, Los Angeles and Salt Lake Railroad Company in California promised a lucrative business locally in southern California, and that if said California line was connected with the lines of railroad extending from Caliente northerly to Salt Lake and to connections with railroads existing at Salt Lake and extending eastwardly to the Missouri River, namely, the Oregon Short Line and its connection, the Union Pacific Railroad, the Denver and Rio Grande Railroad and its connections to the Missouri River, a line of railroad constituting a new through transportation line from the Missouri River through Salt Lake to Los Angeles could successfully and with some reasonable chance for profit be constructed, maintained, and operated, and that the construction, maintenance, and operation of two such lines of railroad from southern California to Salt Lake would be unprofitable and nonremunerative to both of such lines.

That upon the consideration of the circumstances and con-
1060 ditions above recited, the contract and agreement of July 9,
1902, was made, executed, and entered into, and these defendants allege that the said contract and agreement did not create any combination, confederacy, or conspiracy with the intention of or with the effect of suppressing competition, and was not made with the intention of restraining trade and did not have the effect of restraining trade, and was not intended to create or provide for a monopoly and did not cause or create any monopoly whatever.

And these defendants admit and aver that after the making of said contract of July 9th, 1902, and pursuant thereto, the Oregon Short Line Railroad Company and its auxiliary companies made, executed, and delivered to the said San Pedro, Los Angeles and Salt Lake Railroad Company deeds and conveyances conveying to it those certain lines of railroad then commonly known as the Garfield Branch, the Leamington Cut-off, the lines of railroad of the Oregon Short Line Railroad Company lying south of Sandy to Milford, including the branch line to Frisco, the so-called Tintic branches, the line of the Utah and Pacific Railroad Company extending from Milford to Uvada, the constructed line of railroad of the Utah
Nevada and California Railroad Company extending from
1061 Uvada to Caliente, Nevada, the partially completed roadbed
constructed upon the right of way for a railroad from Caliente to Pioche, Nevada, and assigned and caused to be assigned and conveyed to said San Pedro, Los Angeles and Salt Lake Railroad Company all of the right, title, and interest of the said Oregon Short Line Railroad Company and of the Utah, Nevada and California

Railroad Company in and to the located line for a right of way for a railroad extending from Caliente southerly and southwesterly through the Meadow Valley Wash to the Nevada-California State line, and also sold and delivered to the San Pedro, Los Angeles and Salt Lake Railroad Company a large amount of equipment and railroad material situated upon and along the said lines of constructed railroad above mentioned from Salt Lake City and from Sandy southerly to Caliente, embracing in all 523 miles of constructed and completed railroad and the franchises thereof.

These defendants also admit and aver that pursuant to said agreement the Oregon Short Line Railroad Company granted to the said San Pedro, Los Angeles and Salt Lake Railroad Company joint and equal use of the yards and terminal facilities of the Oregon Short Line Railroad Company at Salt Lake City.

1062 These defendants also admit and aver that upon the application of said San Pedro, Los Angeles and Salt Lake Railroad Company to the Southern Pacific Company the said Southern Pacific Company granted to it the right to use jointly and equally with the Southern Pacific Company certain railroad tracks of the Southern Pacific Company extending from Riverside Junction to Colton and thence to San Bernardino, in southern California, which were secured to the said San Pedro, Los Angeles and Salt Lake Railroad Company by virtue of a definite lease embracing the tracks lastly above mentioned, and specifying the terms and conditions for the operation thereof.

These defendants further admit that upon the application of said San Pedro, Los Angeles and Salt Lake Railroad Company to the Atchison, Topeka and Santa Fe Railway Company, and upon negotiations between said San Pedro Company and the said Santa Fe Company, the said Santa Fe Company granted to said San Pedro, Los Angeles and Salt Lake Railroad Company the right to the joint use and occupation of certain of the tracks of the said Santa Fe Company extending from Colton, in California, through San Bernardino, and through Barstow to Daggett, for a term of years,

1063 to a point upon the line of the said Santa Fe Company, a distance of about 91 miles; and that the tracks obtained by said two leasehold interests from the Santa Fe Company and the said Southern Pacific Company, respectively, are now and after the dates of said respective leases were used by the said San Pedro, Los Angeles and Salt Lake Railroad Company as a part of its new through line of railroad from San Pedro to Salt Lake City.

That because of the making and by carrying out the said several agreements hereinbefore referred to the defendant The San Pedro, Los Angeles and Salt Lake Railroad Company, was enabled to com-

plete and open for use its said line of railroad from Salt Lake City to San Pedro via Los Angeles on the first day of May, 1905, and that otherwise it would have been unable to complete and open its said line of railroad between said points for two or three years thereafter.

That at the time of the making of said agreements upwards of 400 miles of difficult and expensive construction work remained to be done to connect the lines of railroad of the San Pedro, Los Angeles and Salt Lake Railroad Company and those of the Oregon Short Line Railroad Company, Utah, Nevada and California Railroad Company at Caliente, Nevada, and there could not for several
1964 years have been any competition of any kind between the parties to said agreement for the transportation of commerce, and the possibility or probability of any such competition and of any restraint or restriction thereon was too remote or contingent to be prohibited by or to come within the provisions of said act of Congress approved July 2, 1890.

These defendants deny that for the purpose of maintaining, extending, and preserving the or any alleged restraint of trade and commerce among the States and with foreign nations, or monopolizing the same and destroying competition with relation thereto, or for any other unlawful or illegal purpose, or to any unlawful effect, said San Pedro, Los Angeles and Salt Lake Railroad Company made certain or any traffic arrangements or contracts with either the said Harriman, Schiff, Kahn, Stillman, Union Pacific Railroad Company, Oregon Short Line Railroad Company, the defendant Clark and his associates or other persons, but these defendants admit and aver that said San Pedro, Los Angeles and Salt Lake Railroad Company did make a certain agreement with the Southern Pacific Company, under date of June 18th, 1903, which is the same agreement referred to in complainants' bill.

These defendants allege and aver that the only tariffs
1065 and rates of the Southern Pacific Company, which by the terms of said contract the said San Pedro, Los Angeles and Salt Lake Railroad Company was to adopt were the rates and tariffs of the Southern Pacific Company in respect of local southern California intrastate business as to that part of the lines of said San Pedro, Los Angeles and Salt Lake Railroad Company which extended from San Pedro through Los Angeles to Pasadena, and as to that portion of the new line then under construction by said San Pedro, Los Angeles and Salt Lake Railroad Company which extended easterly from Los Angeles toward Riverside, California, of which no more than thirty miles had at that time been constructed. These defendants aver that the Southern Pacific Company at the time of making said

contract and for many years prior thereto had owned and exclusively operated a line of railroad from San Pedro to Los Angeles; that it also owned a line from Los Angeles to Pasadena, and that its main line also extended eastwardly from Los Angeles through Pomona, Ontario, and Riverside, California, and thence to its eastern terminus; and these defendants aver and allege that on the 15th day of April, 1907, long prior to the commencement of this suit, the said agreement between said San Pedro, Los Angeles and Salt 1066 Lake Railroad Company and said Southern Pacific Company was by due corporate action by both of these said companies abrogated and canceled.

These defendants, further answering, admit and aver that pursuant to said contract of July 9th, 1902, certain contracts and agreements were made between said San Pedro, Los Angeles and Salt Lake Railroad Company and the said Oregon Short Line Railroad Company, and which are the same agreements referred to by complainant in Paragraph VI of its said bill.

And these defendants admit that in one of said contracts it was, among other things, provided that the San Pedro, Los Angeles and Salt Lake Railroad Company would not for the term of ninety-nine years build or assist in building any lines of railroad which might run northwardly of the parallel of Salt Lake City, Utah, and that the Oregon Short Line Railroad Company would not construct any lines of railroad southwardly of the parallel of Salt Lake City, Utah, except by common consent; but these defendants deny that the purpose of said agreement was to maintain, extend, and preserve the, or any, restraint of trade or commerce among the States or with foreign nations, or of monopolizing the same and destroying competition with relation thereto, as alleged in said bill, or in 1067 pursuance of any conspiracy in said bill alleged, and that it was competent and proper for these defendants to enter into such arrangements with the Oregon Short Line Railroad Company for the reason, among others, that the San Pedro, Los Angeles and Salt Lake Railroad Company had no corporate power under its said articles of incorporation to construct or build any railroads whatever northward from Salt Lake City, Utah; and that the Oregon Short Line Railroad Company, after selling its said railroads and franchises therefor southward from Sandy and from Salt Lake City, retained no corporate power to build, construct, maintain, or operate railroads south of said Sandy or Salt Lake City, as above mentioned.

Answering further, these defendants allege and aver that pursuant to and in carrying out the said contract of July 9, 1902, certain other contracts or agreements referred to in the complainant's bill

were made between the Union Pacific Railroad Company, the Oregon Short Line Railroad Company, and said San Pedro, Los Angeles and Salt Lake Railroad Company, providing the terms and conditions upon which traffic might be interchanged between the said companies and providing for the operation of a through line for the carriage of freight and passengers by through cars,
1068 through trains, and direct connections; and that, among other things, upon the conditions in said contract recited there was reserved to the Union Pacific Railroad Company and to the Oregon Short Line Railroad Company the right to make and establish certain through rates on certain joint business between points reached over the line of said Union Pacific Railroad Company and the Oregon Short Line Railroad Company and points in Utah upon the lines of railroad of the San Pedro, Los Angeles and Salt Lake Railroad Company; but these defendants deny that the effect or purpose of said contract and its several provisions was for the purpose of maintaining, extending, and preserving the, or any, restraint of trade or commerce among the States or with foreign nations, or monopolizing the same or destroying any competition with relation thereto. For a full statement of all the terms and conditions of said contract reference is made hereby to said contract, which is dated the 18th day of June, 1903, and which will be exhibited to the court herein in due course; and these defendants deny that the San Pedro, Los Angeles and Salt Lake Railroad Company thereby in any way or manner or to any extent surrendered the control of said company or the management of its affairs or the control and management of its said railroad and properties to the said
1069 Harriman and his associates, or to the said Union Pacific Railroad Company, or to the said Oregon Short Line Railroad Company, or any or either of them.

These defendants admit that there was issued of the capital stock of said San Pedro, Los Angeles and Salt Lake Railroad Company twenty-five million dollars in par value, and that one-half of the same was issued to and for the defendant Clark and his associates and that one-half thereof was issued to said Edward H. Harriman as trustee, and that the said capital stock of said company was issued to said parties and by them transferred to and deposited with the Farmers' Loan and Trust Company, a corporation of the State of New York, as trustee under an agreement, a copy of which is annexed to complainant's bill, marked "Exhibit B," and made a part thereof.

These defendants deny that each and all or any of the several acts in Paragraph VI of complainant's bill alleged against these defendants were done in whole or in part or in any manner whatever

pursuant to the alleged original conspiracy or to any conspiracy whatever to suppress competition or to procure a monopoly of the transportation business throughout the territory in said bill
1070 described, or in any other territory whatever, and deny that any conspiracy for any of said purposes or for any illegal or unlawful purpose existed, or that these defendants in any way or manner at any time joined in the making or maintaining of any conspiracy or the doing of any unlawful act or thing, or that they or either of them in any way or manner at any time united in connection with other persons or corporations in the purpose of accomplishing of any illegal or unlawful design, and deny that the said San Pedro, Los Angeles and Salt Lake Railroad Company was in any way or manner party to any conspiracy, combination, or confederacy forbidden by law or in restraint of trade or for the purpose of creating any combination, monopoly, or unlawful confederation or conspiracy.

These defendants deny that in pursuance of said alleged or any combination, confederation, or conspiracy, or that in fact or in any way or manner the lines of railroad owned and operated by the said San Pedro, Los Angeles and Salt Lake Railroad Company are in all or any respect managed or controlled by the said alleged or any conspirators or by any person or persons other than its own proper officers and agents, and these defendants deny that there is not now and that there has not been at all times direct, positive,
1071 and active competition between the railroad of said San Pedro, Los Angeles and Salt Lake Railroad Company and the railroad and lines of the Southern Pacific Company or of any other line of railway controlled by said Union Pacific Railroad Company and said Harriman and his associates, as in said bill alleged.

They deny that the aforesaid act of Congress, approved July 2, 1890, or any other law of the United States, was intended to or could constitutionally prohibit the making or carrying out of such agreements and contracts, or any of them, and aver that the construction of railroads in the States of Utah, Nevada, and California by the corporations of said States, respectively, or by corporations of other States authorized by the said States to exercise their corporate powers therein and all agreements relating to the construction or abandonment of the construction of such railroads are matters wholly to be dealt with by the laws of the said States, respectively, and any law of Congress intended or construed to prohibit or regulate or in any manner interfere with such contracts, corporate powers, and matters is in excess of the powers of Congress under the Constitution of the United States and therefore void.

They aver that the said contract, "Exhibit A" to the pe
1072 tion, was made and entered into on July 2, 1902, and that ea
and every contract thereafter made and entered into in carr
ing out and pursuant to the provisions of the same was made a
entered into and was fully executed during the months of June a
July, 1903, and not afterwards; and these defendants aver that
reason of the premises the right to maintain this suit and all ri
of action or prosecution by the Government of the United States
or on account of said contract or for or on account of any of t
matters and things alleged in Subdivision VI of the petition accru
if at all, more than three years and more than five years next bef
the commencement of this suit and is therefore barred by the law
the United States, and all right of the petitioner to relief herei
barred by the said statute and by the laches and acquiescence of
petitioner.

VII. For answer to the seventh paragraph of complainant's
these defendants say that they have no knowledge, information,
belief in respect of the said several matters in said Paragraph V
alleged, except the statements and allegations of the complaint it
as contained in said paragraph, wherefore these defend
1073 neither admit nor deny the said several allegations, but le
the complainant to make its proofs therein as it may
advised.

VIII. All these defendants deny all and all manner of unlaw
combination and confederacy wherewith they are by the said p
tion charged, without this, that if there is any other matter, ca
or thing in the petition contained material or necessary for th
defendants to make answer unto and not herein or hereby well
sufficiently answered, confessed, traversed, and avoided or den
the same is not true to the knowledge or belief of these defend
all of which matters and things these defendants are ready and w
ing to aver, maintain, and prove as this honorable court shall di
and humbly pray to be hence dismissed, with their reasonable c
and charges in this behalf most wrongfully sustained.

SAN PEDRO, LOS ANGELES AND SALT LAKE RAILROAD C
By W. A. CLARK, *President.*

Attest:

J. H. ANDERSON,
Assistant Secretary.

W. R. KELLY,
Solicitor and Counsel.

974 In the Circuit Court of the United States for the District of Utah. In equity. No. 993.

The United States of America, complainant, vs. Union Pacific Railroad Company, Oregon Short Line Railroad Company, The Oregon Railroad and Navigation Company, The San Pedro, Los Angeles and Salt Lake Railroad Company, The Atchison, Topeka and Santa Fe Railway Company, Southern Pacific Company, Northern Pacific Railway Company, Great Northern Railway Company, Farmers' Loan and Trust Company, Edward H. Harriman, Jacob H. Schiff, Otto H. Kahn, James Stillman, Henry H. Rogers, Henry C. Frick, and William A. Clark, defendants.

The separate answer of the defendant The Farmers' Loan and Trust Company to the original petition of the United States of America. (Filed April 6, 1908.)

975 United States Circuit Court, District of Utah. No. 993. In equity.

The United States of America, complainant, vs. Union Pacific Railroad Company, Oregon Short Line Railroad Company, The Oregon Railroad and Navigation Company, The San Pedro, Los Angeles and Salt Lake Railroad Company, The Atchison, Topeka and Santa Fe Railway Company, Southern Pacific Company, Northern Pacific Railway Company, Great Northern Railway Company, Farmers' Loan and Trust Company, Edward H. Harriman, Jacob H. Schiff, Otto H. Kahn, James Stillman, Henry H. Rogers, Henry C. Frick, and William A. Clark, defendants.

976 The separate answer of the defendant, the Farmers' Loan and Trust Company, to the original petition of the United States of America.

This defendant now and at all times hereafter saving to itself all manner of benefit and advantage of exception which can or may be taken to the many errors, uncertainties, and other imperfections in the complainant's petition contained, or to so much and such parts thereof as this defendant is advised it is material or necessary for it to make answer unto, answering, says:

I. As to all the matters alleged in Subdivisions I, II, III, IV, and V of the said petition this defendant is not informed save by said petition, and it leaves the complainant to make such proof thereof as

it may be advised; except that it is informed and believes that the defendants mentioned in Subdivision I of said petition were at the times alleged in said petition, and are now, common carriers employed in the transportation of freight and passengers within and among those States and Territories of the United States in and through which the transportation lines owned by them, respectively are located, and not further or otherwise, but were and are to
1077 that extent engaged in trade and commerce among the several States and with foreign countries; and except that as to all provisions of statutes of the United States and decisions of courts of the United States purporting to be quoted or set forth in said subdivisions of said petition this defendant begs leave to refer to said statutes and decisions themselves for the contents and provisions thereof.

II. This defendant admits that on or about the 7th day of June, 1903, a contract in writing bearing date on that day was made and entered into between this defendant and William A. Clark, individually and as trustee for his associates and Edward H. Harriman, as trustee, as therein stated, of which contract "Exhibit B" annexed to said petition and referred to in Subdivision VI thereof is a true copy and to which for the terms and provisions thereof this defendant begs leave to refer as fully as if the same were herein at length set forth; and this defendant admits that the stock of the defendant San Pedro, Los Angeles & Salt Lake Railroad Company was deposited with and is still held and voted by this defendant in the manner, for the purpose, and as stipulated and provided in and by said contract "Exhibit B." This defendant denies that the making
1078 of said contract "Exhibit B" or the acts done thereunder were done pursuant to any conspiracy to suppress competition or procure a monopoly of the transportation business throughout the territory in said petition described or otherwise, and upon information and belief denies each and every allegation of a conspiracy or combination contained in Subdivision VI of said petition for any of the objects or purposes therein mentioned or for any other purpose, and upon information and belief this defendant denies that the matters alleged in Subdivision VI of said petition or any of them have suppressed, restrained, or in any manner restricted commerce among the several States or with foreign nations. This defendant admits upon information and belief that on or about the 9th day of July, 1902, the defendants William A. Clark and Edward H. Harriman entered into and executed an agreement in writing and that "Exhibit A" to the petition is a true copy of such agreement. Except as in this paragraph expressly admitted or denied, this defendant

not informed save by said petition as to the matters alleged in
ubdivision VI thereof, and it leaves the complainant to make such
oof thereof as it may be advised.

III. This defendant denies that the act of Congress ap-
79 proved July 2nd, 1890, referred to in the said petition, or any
other law of the United States, was intended to or could con-
tutionally prohibit the making or carrying out of such agreement
contract "Exhibit B," or of said other agreement or contract an-
xed as "Exhibit A" to said petition and referred to in Subdivision
I thereof, and avers that the construction of railroads in the States
Utah, Nevada, and California by individuals or by the corpora-
ns of said States, respectively, or by corporations of other States
thorized by the said States to exercise their corporate powers
erein, and all agreements relating to the construction or the aban-
nment of the construction of such railroads, are matters wholly
be dealt with by the laws of the said States, respectively; and
y act of Congress intended or construed to prohibit or regulate
in any manner interfere with such contracts, corporate powers,
d matters is in excess of the powers of Congress under the Con-
tution of the United States, and therefore void.

IV. This defendant avers that the said contract "Exhibit B" to
e petition was made and entered into on June 7th, 1903; it avers
information and belief that the said "Exhibit A" to the petition
was made and entered into on July 2nd, 1902. This defendant
80 avers that by reason of the premises the right to maintain this
suit and all right of action or prosecution by the Government
the United States for or on account of any of the matters and
ngs alleged in Subdivision VI of the petition accrued, if at all,
re than three years and more than five years next before the
mmencement of this suit, and is, therefore, barred by the Revised
atutes of the United States, in such cases made and provided,
d all right of the complainant to relief herein is barred by the
d statutes and by the laches and acquiescence of the complainant.

V. As to all the matters alleged in Subdivision VII of the said
tition this defendant is not informed save by said petition, and
leaves the complainant to make such proof thereof as it may be
vised; except that it admits that the stock of the Northwestern
cific Railroad Company is controlled equally by the defendants
uthern Pacific Company and The Atchison, Topeka & Santa Fe
ilway Company; and upon information and belief this defendant
ers that said Northwestern Pacific Railroad Company is a corpo-
tion duly organized under the laws of the State of California and

that its lines of railroad are situated wholly within the State of California.

1081 VI. This defendant is advised and therefore avers that the cause of action, if any, stated in Subdivisions I to V of said petition, and the cause of action, if any, stated in Subdivision VI thereof, and the cause of action, if any, stated in Subdivision VII thereof, are wholly separate and distinct from one another, and that if either of said alleged causes of action constitutes a violation of the said act of Congress approved July 2nd, 1890, or of any other law of the United States, such violation was and is altogether distinct from any violation of said laws alleged as constituting any other causes of action, and the said alleged causes of action were improperly united in said petition. This defendant avers that the matters set forth in said petition as constituting each of said alleged causes of action are wholly irrelevant to the said other alleged causes of action.

VII. And this defendant denies all and all manner of unlawful combination and confederacy wherewith it is or may be charged in the said petition, without this, that if there is any other matter cause, or thing in the petition contained material or necessary for this defendant to make answer unto, and not herein or hereby well and sufficiently answered, confessed, traversed, and avoided

1082 or denied, the same is not true to the knowledge and belief of this defendant; all of which matters and things this defendant is ready and willing to offer, maintain, and prove as this honorable court shall direct, and humbly prays to be hence dismissed with its reasonable costs and charges in this behalf most wrongfully sustained.

[SEAL.] THE FARMERS' LOAN AND TRUST COMPANY.
By E. S. MARSTON, *President.*

Attest:

A. V. HEELY, *Secretary.*

TURNER, ROLSTON & HORAN,
P. L. WILLIAMS,
Solicitors for Defendant, The Farmers' Loan and Trust Company.

P. L. WILLIAMS,
JAMES F. HORAN,
Of Counsel.

1083 In the United States Circuit Court, District of Utah.

The United States of America, complainant, versus the Union Pacific Railroad Company, the Oregon Short Line Railroad Company, the Oregon Railroad & Navigation Company, the San Pedro, Los Angeles & Salt Lake Railroad Company, the Atchison, Topeka & Santa Fe Railroad Company, the Southern Pacific Company, Northern Pacific Railway Company, Great Northern Railway Company, Farmers' Loan & Trust Company, Edward H. Harriman, Jacob H. Schiff, Otto H. Kahn, James Stillman, Henry H. Rogers, Henry C. Frick, and William A. Clark, defendants.

The answer of Henry C. Frick to the bill of complaint of the United States of America.

D. T. Watson, attorney for defendant. (Filed April 6, 1908.)

1084 In the United States Circuit Court, District of Utah.

The United States of America, complainant, versus the Union Pacific Railroad Company, the Oregon Short Line Railroad, the Oregon Railroad & Navigation Company, the San Pedro, Los Angeles & Salt Lake Railroad Company, the Atchison, Topeka & Santa Fe Railroad Company, the Southern Pacific Company, Northern Pacific Railway Company, Great Northern Railway Company, Farmers' Loan & Trust Company, Edward H. Harriman, Jacob H. Schiff, Otto H. Kahn, James Stillman, Henry H. Rogers, Henry C. Frick, and William A. Clark, defendants.

The answer of Henry C. Frick to the bill of complaint of the United States of America.

To the honorable the judges of the said court:

This defendant, protesting and objecting that he was not, when the petition was filed, nor has he since been, nor is he now a resident of the district of Utah, and that this court has not, as to him, jurisdiction of the matters and things charged in the petition, and
1085 saving unto himself all manner of benefits and advantages by way of exception or otherwise which may or can be taken to the many irregularities, errors and mistakes, imperfections and uncertainties in the bill of complaint or petition contained, for answer to said bill of complaint or petition, or to so much as he is advised it is necessary or material for him to make answer to, answering, says:

I deny all the allegations of the petition that at any time or in any way I was a member of any group or combination of persons

which controlled, or sought to control, the Union Pacific Railroad Company or the Southern Pacific Company, the Atchison, Topeka & Santa Fe Railway Company, or any other railroad company named in the petition, and I deny that I ever entered into any conspiracy or aided or abetted any conspiracy which had for its object the restraint of trade and commerce among the several States or between the said States and foreign countries as carried on by the Union Pacific Railroad Company and the Southern Pacific Company, or the system of either, or by any other lines of railroads or steamships as named in the petition, and I deny that in any way I ever entered into any combination or conspiracy or aided or abetted in

1086 combination or conspiracy to unlawfully deprive the public of the facilities and advantages in the carrying on of interstate and foreign trade and commerce theretofore enjoyed through the independent competition of the railway systems and steamship lines named in the petition, or that I ever was a member of any combination or conspiracy whose object was to effect a virtual or substantial combination of the Union Pacific Railroad Company and any other transcontinental railway company or companies or steamship line or lines, or whose object or purpose was to place restraints on any or all competitive interstate and foreign trade and commerce or to monopolize or attempt to monopolize the same or to suppress competition in the same as averred in the petition, or that I ever in any way was a party to or aided or abetted any such combination or conspiracy.

I never knowingly violated the provisions of an act of Congress approved July 2, 1890, entitled "An act to protect trade and commerce against unlawful restraints and monopolies," and I am not guilty of any of the acts, matters, or things charged in the petition which are in alleged violation of said act of Congress.

The facts, so far as I am concerned, touching the matters alleged in the petition are as follows:

1087 I am now, and for a number of years I have been, an investor in the capital stock of the Southern Pacific Company and the Atchison, Topeka & Santa Fe Railway Company, but the stocks I have bought with my own means as my own individual investments, and without cooperation on the part of any other person. I bought them because I believed the investments to be good ones; not only that, they were, when I bought, fairly worth the price paid for them, but I believed in the future prospects of each one of said railroad companies, and I bought with such belief as one of the prominent reasons for my investment.

I am now, and I always have been, a great believer in the future of our country, and especially of the future of the West and the

Pacific slope, and when I bought I then looked, as I now do look, forward to a large increase in the value of the said stocks legitimately arising from the intrastate and interstate trade and traffic which I think is certain, in the ensuing years, to develop and to demand transportation over these different lines of railroad.

I never have believed, nor do I now believe, in the restriction of competition in interstate and foreign traffic as a policy of the
1088 railroad system in a country as undeveloped as in the West and to the Pacific Ocean. Neither of the systems named in the petition, either the Union Pacific, or the Southern Pacific, or the Atchison, Topeka & Santa Fe, or any other of the existing systems, or all of them combined, will, as I believe, in the near future, be much more than able to efficiently handle the trade and traffic which will seek their lines, and I feel certain that each one of these systems will have all the business that each can handle.

In my purchases of these stocks I had no idea of the formation of a monopoly which could hope to control the present, let alone the future, vast traffic east and west to and from the Pacific slope, and certainly I never designed any such amalgamation or combination of railroads as is charged in the petition, and I never directly or indirectly was a party to or an abettor or aider of any such scheme as is therein outlined.

I was elected a member of the board of directors of the Union Pacific Railroad Company in the month of October, 1904, and I have ever since been a member of said board. I deny that since I became a director of said railroad company the Union Pacific Railroad Company became a party to or has carried out any such combina-
1089 tion or conspiracy as is alleged in the petition, or was a party to an attempt to restrict interstate trade or traffic.

It is true that, as in all large corporations where almost daily questions are arising which demand prompt answers, an executive committee was created long before I became a member of its board of directors, which executive committee I regard as necessary to the efficient management of the company, and the actions of that executive committee have been and are now always subject to the control of the board of directors as well as to the stockholders.

I deny the averments in the petition—

"That during all the times above mentioned, by by-laws of said company to that end enacted, the directors of said corporation have delegated their power to manage and direct the business and affairs of the said company to an executive committee of five members, to act in such manner as such committee should deem best for the company's interests in all cases in which specific directions shall not have been given by the board."

"And it is and has been also provided by said by-laws that the chairman of said executive committee is authorized to repre-
1090 sent that committee when it is not in session."

The by-law which relates to such matters is as follows:

"SECTION 12. The directors shall elect from their number an executive committee of five mmbers. Such committee shall hold office until the next annual election of directors, and shall, when the board of directors is not in session, have all the powers of the board of directors to manage and direct all the business and affairs of the company in such manner as said committee shall deem best for the company's interests in all cases in which specific directions shall not have been given by the board of directors. The chairman of the executive committee shall be elected by the board of directors, and subject to the control and approval of the executive committee, shall represent it when not in session. He shall from time to time report to the executive committee. Any vacancy which may occur in said committee shall be filled by the board of directors. Regular meetings of said executive committee shall be held at such times and at such places in the city and State of New York or elsewhere as the committee shall from time to time determine. Special meetings may be called at any time by the chairman or any three members of
1091 the committee, to convene at such time and place as may be appointed. Three members of the committee shall constitute a quorum. If a quorum be not present at any meeting, a majority of the members of the committee present may adjourn the meeting until a later day or hour, and a minute of such adjournment shall be entered on the records by the secretary and no further notice of such adjournment shall be required; or the members present, whether constituting a quorum or not, at their option, shall have the power to appoint a substitute or substitutes from the members of the board of directors to act during the temporary absence of any member or members of the committee."

I deny the allegation of the petition—

"That, pursuant to said by-laws, the said defendant Harriman has with the concurrence and assistance of said individual defendants other than defendant Clark, who were members of the executive committee or directors of said company, dominated the affairs and controlled the management of said defendant Union Pacific Railroad Company."

I have, as I have stated, from time to time made investments in the capital stock of the Atchison, Topeka & Santa Fe Railway Company, and I was elected a member of the board of directors of said
1092 company in the year 1904, and have ever since continued to be a member of said board and a holder of considerable stock in said railroad company.

I deny the averments of the seventh paragraph of the bill that the purchase I made of the capital stock was in pursuance of any conspiracy to restrain trade and commerce among the several States and with foreign nations, or to monopolize or attempt to monopolize such trade or commerce, or to unlawfully restrain and prevent competition among the railroad systems named in the petition, and I deny that I purchased my said stock jointly with Harriman, Schiff, Kahn, Stillman, and Rogers. On the contrary, I purchased my said stock as my separate individual investment.

I deny that I was elected a member of the board of directors of the Atchison, Topeka & Santa Fe Railway Company for the purpose of aiding or abetting in any shape or form any such alleged conspiracy as is named in the petition, and I deny that I had or have ever united myself with any conspiracy alleged by the petition to have been made by Messrs. Harriman, Schiff, Kahn, and Stillman, and I deny that my election as a member of the board of directors of the said Atchison, Topeka & Santa Fe Railway Company was in pursuance of or carrying out of or in aid of any such alleged conspiracy.

1093 I never knew or heard of such conspiracy until the filing of the petition in this case.

I especially deny that by reason of my being upon the board of directors of the Atchison, Topeka & Santa Fe Railway Company, as also a member of the board of directors of the Union Pacific Railroad Company, that the Union Pacific Railroad Company or any of its officers or directors have had knowledge of the affairs and business of the said Atchison, Topeka & Santa Fe Railway Company; but I aver that, on the contrary, in each of my positions as director of the Union Pacific Railroad Company and as director of the Atchison, Topeka & Santa Fe Railway Company, I have been scrupulously careful not to make known to either company the acts and doings of the other.

I have not in either of those positions acted adversely to the interest of the company in which at the time I was acting as a member of its board of directors.

I recognize that each of these systems has a great future and each will in the near future have all the business it can properly attend to, and that each of the systems is more largely benefited by the general development of the West and of the territories through

1094 which each runs, and of the business interests that each serves than from any temporary and comparatively trivial benefit which might arise from the restriction in competition for freight.

To some inconsiderable extent and at times the Union Pacific Railroad Company and the Atchison, Topeka & Santa Fe Railroad Company have been and probably will be competitors, but the future of each of these railroad systems is to be so certain and decided that I

believe, and I act on that belief, that this future of each should dom-
nate and control and thus minimize as a real factor in the policy o
the companies the question of competition. In great and controllin
degree the present and future interests of the territory traversed b
each of these systems demands a thoroughly equipped railroad syste
properly and economically supplying the wants of the territory tra
ersed by each, and this each of these railroad systems is endeavorin
to give.

I have not as a member of the Atchison, Topeka & Santa Fe Rai
road Company board disregarded or slighted its interest or welfa
for the benefit of the Union Pacific Railroad Company, nor have
disclosed to the latter the business of the former; but, on the co
trary, I have to the best of my ability acted as a member of th
1095 board of directors of the Atchison, Topeka & Santa Fe Rai
road Company solely in the interest and the welfare of sai
company, and I have kept my knowledge of its affairs gained as
member of its board of directors as confidential.

I deny that the acquisition of stock by myself in the Atchiso
Topeka & Santa Fe Railroad Company, or my membership on th
board of directors, in any way changed or lessened the competitio
between the Union Pacific Railroad Company and the Atchiso
Topeka & Santa Fe Railway Company or between the Southe
Pacific Company and the Atchison, Topeka & Santa Fe Railroad C

I deny the averments of the petition that for the purpose of mak
ing more certain and effective the restraint of trade and commerc
and the elimination of competition and the monopolization of com
merce referred to in the petition, that Harriman and his alleg
coconspirators caused to be purchased by the Union Pacific Railro
Company $10,000,000 par value of the preferred stock of the sai
Atchison, Topeka & Santa Fe Railway Company, but I admit tha
said purchase was made as a legitimate investment by the Oregon
Short Line Railroad Company, and that the said company still own
the said stock, and I also admit that the Union Paci
1096 Railroad Company owns the capital stock of said last-name
company.

I deny the averments of the seventh paragraph of the bill, that th
acquisition of the stock of the Atchison, Topeka & Santa Fe Rai
way Company, as alleged in said petition, by myself and other
has to a large extent eliminated competition between the Unio
Pacific Railroad Company, and the Atchison, Topeka & Santa F
Railway Company, and I deny that I or the persons alleged to b
conspirators in said paragraph of the petition have caused th
Southern Pacific Company to abandon certain extensions, improve
ments, and additions to their railway lines in the State of California
or that the Atchison, Topeka & Santa Fe Railway Company h

been in the same manner caused and induced to abandon extensions and additions to its said railway lines in said State of California.

I then thought, and now think, that the action of the Southern Pacific Company and the Atchison, Topeka & Santa Fe Railroad Company in the matter of the Northwestern Pacific Railway Company, as explained in the Union Pacific Railway Company's answer, was wise and prudent, and in the best interest of both of said
1097 railroad companies, and also of the public, and I deny the concluding averment of the seventh paragraph of the bill—

"That all of the said acts hereinbefore enumerated have been done in pursuance to the said conspiracy, so originally formed by certain of the defendants as fully set forth in this bill, and in which said conspiracy and confederation said other defendants joined from time to time as above alleged."

I admit that Jacob H. Schiff, Otto H. Kahn, and James Stillman were for years members of the board of directors of the Union Pacific Railroad Company, and I admit that there is a banking firm in the State of New York doing business under the name of Kuhn, Loeb & Company, but I deny the averments of the second paragraph of the petition—"which said banking house is and during all the time above stated has been the fiscal agent of said Union Pacific Railroad Company, through which agent substantially all the purchases of said stocks hereinafter mentioned have been made."

I admit that from time to time Kuhn, Loeb & Company have bought and sold bonds and stocks in which the Union Pacific Railroad Company has been interested.

1098 I admit that Henry H. Rogers and myself are still members of the board of directors of the Union Pacific Railroad Company and the Atchison, Topeka & Santa Fe Railway Co.

Most of the matters and things alleged in the different paragraphs of the bill are as to transactions completed prior to the time I had any interest in either the Union Pacific Railroad Company or the Southern Pacific Company or the Atchison, Topeka & Santa Fe Railway Company; I took no part in the said matters and things averred in said paragraphs nor have I personal knowledge as to the same.

All of the matters and things alleged in the third paragraph of the bill took place prior to my election as a member of the board of directors of either the Atchison, Topeka & Santa Fe or the Union Pacific Railroad Company, and I had no personal connection with any of them. As a member of the board of directors of said two companies and also as a stockholder in said two companies and in the Southern Pacific Company I do now have a general knowledge of the location of the different lines of railroad owned by the said

different railroad companies and the systems as made up by said lines named in the petition, and I know in a general way of the Oregon Railroad & Navigation Company, of the Portland &
1099 Asiatic Steamship Company, and of the Pacific Mail Steamship Company, and I believe the routes stated in the third paragraph of the bill are correct, but I am not acquainted with the details of matters happening prior to the time that I became a member of the board of directors of the Union Pacific Railroad Company and the Atchison, Topeka & Santa Fe Railway Company.

I admit that the Atchison, Topeka & Santa Fe Railway Company has to a certain extent since I have been on the board of directors of that company been in competition with the Union Pacific Railway Company and the Southern Pacific Railway Company, but I never took any active part in such competition, and so far as I can now recollect, no question of competition between these two companies has come up for decision before the board of directors or executive committee of either of said railroad companies at any time when I was present.

I know that the Northern Pacific Railway Company and the Great Northern Railway Company are each owners of lines of railway extending from ports on Lake Superior and also from the city of St. Paul through different Western States, and I am informed that
1100 it is true that these two railroad companies were and are the joint owners of substantially all the stock of the Chicago, Burlington & Quincy Railroad Company, but I deny the averments in the petition that the Supreme Court of the United States has held that their lines are competitive with the lines of the Union Pacific Railway Company for a large amount of traffic, both passenger and freight.

On information which I believe to be true, I deny all the other allegations of competition as alleged in the third paragraph of the petition.

I have no personal knowledge of the matters and things alleged in the fourth paragraph of the petition, and on information which I believe to be true, I deny that the conspiracy, as is therein stated, was ever formed.

I admit that the Oregon Short Line Railroad Company is the owner of 900,000 shares of the common and 342,000 shares of the preferred capital stock of the Southern Pacific Railroad Company, but I deny that it was acquired in pursuance of any conspiracy such as therein alleged.

I admit that the said company, as holding such stock, took its share of the increase of stock made by the Southern Pacific Company, but I deny that the Union Pacific Railroad Company

1101 controls the management, operation, and business affairs of the Southern Pacific Railway Company, and I deny that the two railroads have been operating as one single, entire system since 1901, and I deny that the matters and things alleged in said fourth paragraph were done for the purpose of monopolizing the trade and commerce among the States and with foreign nations and of eliminating competition.

I had nothing to do with the acquisition of stock by the Union Pacific Railroad Company in the Northern Pacific Railway Company, as alleged in the fifth paragraph of the bill, and I have no personal knowledge of the matters and things therein referred to.

I know of the decision of the Supreme Court of the United States reported in 197 U. S., 244, as *Harriman vs. Northern Securities Company*. I was not a party to said litigation, but I deny that so far as the Union Pacific Railroad Company was concerned that the litigation was prosecuted, as alleged in the petition, for the sole purpose of effectuating the said conspiracy so originally entered into to restrain trade and commerce, smother competition, and monopolize such trade and commerce among the several States and with foreign nations.

1102 I have no personal knowledge of the matters and things alleged in the sixth paragraph of the petition or of the contract therein referred to, or of the conspiracy therein alleged, but so far as I know and so far as I have had any part in the management of the Union Pacific Railroad Company since 1904 I deny that there has been any conspiracy to which it was a party to suppress competition or monopolize trade and commerce among the States and with foreign nations, such as is alleged in the sixth paragraph of the petition.

I deny the averments of the seventh paragraph of the petition, except as hereinbefore admitted by me.

In so far as the other allegations in said petition may be material to the case of the plaintiff, I pray it be put upon proof of each and all of the same.

And this defendant denies all and all manner of unlawful combination and confederacy wherewith he is by the said petition charged, without this, that if there is any other matter, cause, or thing in the petition contained material or necessary for this defendant to make answer unto, and not herein or hereby well and sufficiently answered, confessed, traversed, and avoided or denied, the same is not true to the knowledge or belief of this defendant; all of which mat-

1103 ters and things this defendant is ready and willing to aver, maintain, and prove, as this honorable court shall direct, and humbly prays to be herein dismissed with his reasonable costs in this behalf most wrongfully sustained.

1104 In the Circuit Court of the United States, District of Utah.
In equity. No. 993.

United States of America, complainant, vs. Union Pacific Railroad Company et al., defendants.

Separate answer of the defendant, The Atchison, Topeka and Santa Fe Railway Company.

Gardiner Lathrop, Robert Dunlap, solicitors for defendant.
P. L. Williams, of counsel.
(Filed April 14, 1908.)

1105 United States Circuit Court, District of Utah.

United States of America, complainant, vs. Union Pacific Railroad Company; Oregon Short Line Railroad Company; The Oregon Railroad and Navigation Company; The San Pedro, Los Angeles and Salt Lake Railroad Company; The Atchison, Topeka and Santa Fe Railway Company; Southern Pacific Company; Northern Pacific Railway Company; Great Northern Railway Company; Farmers' Loan and Trust Company; Edward H. Harriman; Jacob H. Schiff; Otto H. Kahn; James Stillman; Henry H. Rogers; Henry C. Frick; and William A. Clark, defendants. In equity. No. 993.

Separate answer of the defendant, The Atchison, Topeka and Santa Fe Railway Company, to the bill of complaint of the
1106 United States of America, complainant.

This defendant, the Atchison, Topeka and Santa Fe Railway Company, now and at all times hereafter saving to itself all and all manner of benefit or advantage of exception, or otherwise, that can or may be had or taken to the many errors, uncertainties, and imperfections in said bill contained, for answer thereto, or to so much thereof as this defendant is advised it is material or necessary for it to make answer to, answering, saith:

I. This defendant admits that the Union Pacific Railroad Company; Oregon Short Line Railroad Company; the Oregon Railroad and Navigation Company; the San Pedro, Los Angeles and Salt Lake Railroad Company; this defendant, the Atchison, Topeka and Santa Fe Railway Company; Southern Pacific Company; Northern Pacific Railway Company; and Great Northern Railway Company were, at the times in said bill or petition mentioned, and now are common carriers, each engaged or employed in the transportation

of freight and passengers among the several States of the United States and between such States and foreign nations, and as such carriers so employed were and are engaged in trade and commerce
1107 among the several States and with foreign nations.

II. As to all the matters and things set forth in Subdivision II of said complainant's petition or bill, this defendant says that it is a stranger to all and singular such matters and things, and therefore leaves the complainant to make such proof thereof as it shall be able to produce.

III. And this defendant admits that it has been, for a period of more than eight years last passed, the owner, and in control by direct ownership and by the ownership of the stock, of railway companies owning a portion of certain lines, and now by ownership, of a line of railway reaching from Chicago in the State of Illinois, through the States of Illinois, Missouri, Kansas, Colorado, the Territories of New Mexico and Arizona, and the State of California, to the city of San Francisco and to tidewater at San Diego, California; that said line of railway touches the Union Pacific at Kansas City, Missouri, and to a certain extent, but in connection with other connecting lines of railroads, is and has been competitive with the lines of the Union Pacific Railroad Company and the Southern Pacific
1108 Company, in connection also with other connecting lines of railroads, for certain traffic to and from the Pacific coast, and also from the Orient in connection with steamship lines to and from various points in the east and the Mississippi Valley and in the State of Colorado and other interior States, but largely by means of such connecting lines of railway of other railway companies as aforesaid. It admits that its tracks cross the continent between those of the Southern Pacific Company and those of the Union Pacific Railroad Company, and until the construction of the San Pedro, Los Angeles, and Salt Lake Railroad constituted the only outlet to the east by rail from territory along the Pacific coast touched by it at San Francisco, Los Angeles, and San Diego, but denies that it constituted the only outlet to the east by rail from all the territory along the Pacific coast south of Portland to the Mexican border other than the lines of the Union Pacific Railroad Company and said Southern Pacific Company. On the contrary, it avers that there were other lines connecting with said Southern Pacific Company south of Portland which formed an outlet to the east.

It denies that it was for a number of years engaged in operat-
1109 ing a line of steamships to oriental ports from the port of San Diego, California. It admits that traffic which was competitive as between said Southern Pacific and Union Pacific companies and this defendant was and is of considerable volume, both passenger and freight.

As to all and singular the other matters and things set forth in Subdivision III of said petition or bill, this defendant says that it is a stranger as to all and singular such other matters and things, and therefore leaves the complainant to make such proof thereof as it shall be able to produce.

IV. As to the matters and things set forth in Subdivision IV of said petition or bill, this defendant says that it is a stranger to all and singular such matters and things, and therefore leaves said complainant to make such proof thereof as it shall be able to produce.

V. As to all and singular the matters and things in Subdivision V of said petition or bill contained, this defendant says that it is a stranger to all and singular such matters and things, and therefore leaves the complainant to make such proof thereof as it shall be able to produce.

1110 VI. This defendant denies that said defendant E. H. Harriman secured to said The San Pedro, Los Angeles and Salt Lake Railroad Company the use of certain of the tracks owned and controlled by this defendant, The Atchison, Topeka and Santa Fe Railway Company, in southern California. On the contrary this defendant avers that through the action of its own directors it voluntarily granted said The San Pedro, Los Angeles and Salt Lake Railroad Company trackage rights; that is, the right to operate its trains over a portion of the line of this defendant in southern California, such arrangement being an advantageous one to this defendant, inasmuch as it derived a revenue from a part of the use of its property by said The San Pedro, Los Angeles and Salt Lake Railroad Company.

As to all and singular the other matters and things contained in Subdivision VI of said petition or bill, this defendant says that it is a stranger to all and singular such other matters and things, and therefore leaves the complainant to make such proof thereof as it shall be able to produce.

1111 VII. This defendant admits that in the year 1904 the defendant Harriman represented to certain officials of this defendant that he and other individuals associated with him had acquired approximately three hundred thousand (300,000) shares of the stock of this defendant, and stated that he thought that these interests should be represented in the directorate of this defendant, but this defendant denies that the defendant Frick joined in or made any such representation or statement. On information and belief this defendant avers that at the time when such representation or statement were made by said Harriman the defendant Frick had not purchased any stock in the defendant company and that he has never been associated with said Harriman or any of the defendants in

purchases of stock in this defendant, but that all shares of stock in this defendant held by him were purchased by him and are held by him severally and individually as an investment. This defendant avers that its officials stated to said defendant Harriman that they would not be willing to admit representatives of the Union Pacific Railroad Company or of the Southern Pacific Company to places on the board of directors of this defendant, and it avers
1112 further that the officials of this company were thereupon assured by the defendant Harriman that neither the Union Pacific Railroad Company nor the Southern Pacific Company had any interest in said stock purchased by himself and associates and that such stock had been purchased by himself and associates as investments. This defendant admits that by reason of the fact that under the cumulative system of voting provided for by the laws of Kansas the defendant Harriman, by virtue of the stock in the defendant company held by himself and his associates and by virtue of the proxies which he might be able to obtain from other stockholders, would probably have been able to elect at least two directors of the defendant company, and that the officials of this defendant consented and agreed that said Harriman and his associated owners of stock of this defendant might nominate two directors who would be satisfactory to the board of directors of this defendant, but with the distinct understanding that they were to represent only the stock held by himself and his associates individually and in no sense should act as representatives of either the Union Pacific Railroad Company or of the Southern Pacific Company. Accordingly, on February 8, 1905, the defendants, Frick and Rogers, were
1113 chosen as directors to fill vacancies on the board of directors of this defendant, and said defendants ever since have been and now are directors of this defendant. This defendant denies that said Union Pacific Railroad Company, through said Rogers or Frick, has had knowledge of the affairs or business of this defendant, and this defendant avers on information and belief that the said Rogers and Frick at all times have acted and voted as directors of this defendant conscientiously in the interest of this defendant and not in the interest of either the Union Pacific Railroad Company or the Southern Pacific Company. This defendant denies that the said Rogers and Frick, or either of them, united themselves with the said Harriman or with any of the defendants in any conspiracy alleged in the bill of complaint. This defendant avers, on information and belief, that the stock originally acquired by said Harriman and his associates was all common stock, but that subsequently some of this common stock was sold. This defendant states that its records at present show that Mr. H. H. Rogers holds one hundred

(100) shares of stock, Mr. Frick thirty-five thousand three hundred (35,300) shares of stock, Mr. Harriman two thousand three hundred (2,300) shares of stock, and Kuhn, Loeb and Company and others, believed to be in the interest of such firm, one hundred
1114 fifty-one thousand one hundred forty-nine (151,149) shares of the stock of this defendant. But it has not been advised and it does not know, that any of the above stock was purchased for or on behalf of the Union Pacific Railroad Company, but, on the contrary, avers that no stock has ever appeared on its records in the name of the said Union Pacific Railroad Company or of any of its associated companies. This defendant further denies that competition between the systems of railway controlled by said Union Pacific Railroad Company and that of this defendant has to any extent been eliminated, either on account of the holdings of the stock of the said Harriman and his associates or otherwise. This defendant further denies that it has been induced by said Harriman and his associates to abandon extensions or additions to its lines of railway in the State of California.

It admits that certain lines of railroad partially constructed within the State of California, formerly owned by corporations whose stock was owned or controlled by this defendant, and that certain other lines of railroad partially constructed within the State of California formerly owned by corporations whose capital stock was owned or controlled by the Southern Pacific Company, were conveyed to
1115 a company incorporated under the laws of California under the name of "Northwestern Pacific Railroad Company," and that one-half of the capital stock of said last-named company was owned by this defendant and the other half by the Southern Pacific Company, but it states that all of the corporations which formerly owned said lines of railway and said Northwestern Pacific Railroad Company itself were incorporated under the laws of the State of California, and that such sales and consolidation were made under and by authority of the laws of said State; that said lines of railway so consolidated formed by further construction connecting lines and such consolidation thus afforded better railway facilities to the northwestern part of California than had been theretofore afforded by the several respective lines theretofore operated by their several respective companies. This defendant further says that prior to such consolidation the companies whose stock was as aforesaid owned by it only owned and operated about fifty miles out of Eureka and a few miles of detached line in Mendocino County; that said consolidation gave this defendant, through said Northwestern Pacific Railway Company, access for traffic to the territory served by said several lines north of San Francisco Bay; that said trans-

1116 action did not prevent competition or result in a monopoly, but, on the contrary, prevented the Southern Pacific Company from having or maintaining a monopoly in the aforesaid territory north of San Francisco Bay; that but for this consolidation it would have been impracticable to build the extension connecting Eureka with the San Francisco Bay or to furnish needed railway facilities to the territory which should be served by these lines.

This defendant denies that the lines of railway of the Union Pacific Railroad Company and the Southern Pacific Company and of this defendant are operated in harmony with each other under agreements or understandings as to rates or divisions of business, and this defendant says that it was at no time a party to any alleged conspiracy set forth in said petition or bill, and that as to all and singular the other matters and things in Subdivision VII of said petition or bill this defendant is a stranger to all and singular such other matters and things, and therefore leaves the complainant to make such proof thereof as it shall be able to produce.

VIII. And this defendant submits to this honorable court 1117 that all and every of the matters in said complainant's petition or bill mentioned and complained of are matters with respect to which the said complainant is not entitled to any relief as against this defendant from a court of equity, and this defendant hopes that it will have the same benefit of this defense as if it had demurred to said complainant's bill or petition.

IX. And this defendant denies all and all manner of unlawful combination and confederacy wherewith it is by said bill charged, without this, that if there is any other matter, cause, or thing in said complainant's said bill of complaint or petition contained material or necessary for this defendant to make answer unto and not herein and hereby well and sufficiently answered, confessed, traversed, and avoided, or denied, the same is not true to the knowledge or belief of this defendant; all which matters and things this defendant is ready and willing to aver, maintain, and prove as this honorable court shall direct, and humbly prays to be hence dismissed, with its reasonable costs and charges in this behalf most wrongfully sustained.

1118 THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY,
By W. B. JANSEN,
Its Fourth Vice-President.
GARDINER LATHROP,
ROBERT DUNLAP,
Solicitors for the Atchison, Topeka and Santa Fe Railway Company.
P. L. WILLIAMS, *Of Counsel.*

1119 No. 993. United States Circuit Court, district of Utah. In equity.

The United States of America, complainant, vs. Union Pacific Railroad Company et al., defendants.

Answer of the defendant Henry H. Rogers.

Shearman & Sterling, attorneys for defendant. James M. Beck, P. L. Williams, of counsel.
(Filed May 2, 1908.)

1120 United States Circuit Court, district of Utah. No. 993. In equity.

The United States of America, complainant, vs. Union Pacific Railroad Company, Oregon Short Line Railroad Company, The Oregon Railroad and Navigation Company, The San Pedro, Los Angeles and Salt Lake Railroad Company, The Atchison, Topeka and Santa Fe Railway Company, Southern Pacific Company, Northern Pacific Railway Company, Great Northern Railway Company, Farmers' Loan and Trust Company, Edward H. Harriman, Jacob H. Schiff, Otto H. Kahn, James Stillman, Henry H. Rogers, Henry C. Frick, and William A. Clark, defendants.

1121 The answer of Henry H. Rogers to the petition of the United State of America.

This defendant, protesting and objecting that he was not, when the petition was filed, nor has he since been, nor is he now a resident of the district of Utah, and that this court has not, as to him, jurisdiction of the matters and things charged in the petition, and saving unto himself all manner of benefits and advantages by way of exception or otherwise which may or can be taken to the many irregularities, errors and mistakes, imperfections and uncertainties in the petition contained, for answer to said petition, or to so much as he is advised it is necessary or material for him to make answer to, answering, says:

This defendant denies all the allegations of the petition that at any time or in any way he was a member of any group or combination of persons, which controlled or sought to control the Union Pacific Railroad Company or the Southern Pacific Company, the Atchison, Topeka & Santa Fe Railway Company, or any other railroad company named in the petition, and he denies that he ever entered into any conspiracy or aided or abetted any conspiracy which had for

object the restraint of trade and commerce among the several
122 States or between the said States and foreign countries as carried on by the Union Pacific Railroad Company and the outhern Pacific Company, or the system of either or by any other nes of railroads or steamships as named in the petition, and he de- ies that in any way he ever entered into any combination or con- piracy or aided or abetted any combination or conspiracy to unlaw- ully deprive the public of the facilities and advantages in the car- ying on of interstate and foreign trade and commerce theretofore njoyed through the independent competition of the railway systems nd steamship lines named in the petition, or that he ever was a mem- er of any unlawful combination or conspiracy whose object was to ffect a virtual or substantial combination of the Union Pacific Rail- oad Company and any other transcontinental railway company or mpanies or steamship line or lines, or whose object or purpose was place restraint on any or all competitive interstate and foreign ade and commerce, or to monopolize or attempt to monopolize the me or to suppress competition in the same as averred in the petition, that he ever in any way was a party to or aided or abetted any ch alleged combination or conspiracy. This defendant denies that
123 he ever violated the provisions of an act of Congress approved July 2, 1890, entitled "An act to protect trade and commerce against unlawful restraints and monopolies," and asks that is denial be regarded by the court for the sake of brevity as re- ated as against every allegation in said petition, which charges to e contrary as to this defendant.

For further answer this defendant says:

This defendant is now and for a number of years has been an in- stor in the capital stock of the Union Pacific Railroad Company, e Southern Pacific Company, and the Atchison, Topeka & Santa Fe ailroad Company. These investments were not made with any ew to exercising any control in the respective companies beyond the rtial control which this defendant, in common with any stock- older, exercises in proportion to his stock holdings, and they were rther made with this defendant's own means and credit, in the be- f which this defendant had that the investments were legitimate es and that this defendant was entitled to all the rights, privileges, d profits which would lawfully and legitimately result from such vestments. These investments were not made or held with any rpose or object on the part of this defendant, either alone or in
124 conjunction with others, to restrain competition in interstate or foreign traffic or with any purpose or object of forming or maintaining any monopoly. This defendant avers that no onopoly in transportation has existed or is likely to exist, and that never had any thought, purpose, or plan, either individually or in

conjunction with others, to form a combination of railroads, as is charged in Paragraph IV of the petition.

This defendant became a director of the Union Pacific Railroad on the eighth day of October, 1901, and is still a director of said company. As such director he has at all times acted according to his best judgment for the true and lawful interests of the said railroad and has never knowingly failed in any duty which he owed as such director either to the railroad company or to the public.

Further answering the said petition, by paragraphs, this defendant says:

I. The averments contained in the first paragraph of the petition this defendant believes to be true.

II. (1) He denies that from or at any time after January 1, 1901, he and the other defendants named in the first sentence of Paragraph II of the petition have owned or controlled a majority
1125 of the capital stock of the Union Pacific Railroad Company.

(2) He admits that he became a director of said Union Pacific Railroad Company on the eighth day of October, 1901, and is still a director of said company.

(3) He admits that during all of said time the said Jacob H. Schiff and Otto H. Kahn were and still are members of a banking firm of the city of New York, doing business under the name and style of "Kuhn, Loeb & Co.," but denies that said banking house has been or is the "fiscal agent" of the defendant Union Pacific Railroad Company; and he admits that some of the stocks referred to in the petition were bought by said Union Pacific Railroad Company and said Oregon Short Line Railroad Company, respectively, from time to time through said banking house, and that some of the bonds issued by said companies were sold to said firm.

(4) He admits that said Harriman, Schiff, Stillman, and Frick became directors and served as such as stated in Paragraph II of said petition.

(5) As to the true meaning and effect of the by-laws, referred to in Paragraph III of the petition, this defendant asks for greater
1126 certainty, if the inquiry be material and relevant, that the petitioner be required to formally prove the by-laws by the production so that this court may itself determine their true meaning.

(6) He denies that pursuant to such by-laws or otherwise the said Harriman has, with the concurrence of said individual defendants other than Defendant Clark, who are members of the executive committee or board of directors of said company, dominated the affairs and controlled the management of said Union Pacific Railroad Company.

III. Most of the averments contained in Paragraph III of the petition refer to transactions which took place prior to the

hen this defendant became a director in the railroad company, nd as to such transactions this defendant disclaims personal knowl-dge. Except as hereinafter specifically admitted or denied, the ther averments refer to transactions as to which this defendant has o personal knowledge. This defendant, however, on information nd belief accepts and adopts the respective admissions and denial o Paragraph III of the said petition which are contained in the oint and several answer of the Union Pacific Railroad Company, the Oregon Short Line Railroad Company, and the Oregon
127 Railroad and Navigation Company, and he asks that such admissions, denials, and averments may be regarded as part f this answer as fully as though recited herein, they being omitted or the sake of brevity and because they are already before the court n the joint answer above referred to.

IV. (1) He denies on information and belief that in the spring of 901, or at any other time, said Schiff, Kahn, Harriman, Stillman, nd Union Pacific Railroad Company, or any of them, conspired to estrain trade and commerce among the foreign States and between aid States and several countries, carried on by said Union Pacific Railroad Company and said Southern Pacific Company or any other ompany, or to monopolize or attempt to monopolize any such trade nd commerce or to restrain or prevent competition among said rail-ray systems or any other railway systems, and said steamship lines r any other steamship lines in respect to any such commerce; or to leprive the public of the facilities and advantages in the carrying on f such trade and commerce through the independent competition, if ny there was, of said railway systems and steamship lines or other railway systems or steamship lines; or that he and the said
128 defendants or any of them ever entered into a combination or conspiracy for a virtual or substantial consolidation of said Union Pacific Railroad Company and any other transcontinental ailway companies or steamship companies; or to place restraint pon any competitive commerce, if any such there was, carried on by uch companies; or to monopolize or attempt to monopolize the same; r to suppress any competition existing between any of said compa-ies or lines.

(2) He admits on information that on the 20th day of February, 1901, defendant Union Pacific Railroad Company acquired by pur-hase from said firm of Kuhn, Loeb & Co. 750,000 shares of the capi-al stock of said Southern Pacific Company of the aggregate par alue of $75,000,000 out of 1,978,399 shares of the aggregate par alue of $197,839,900, then issued and outstanding, but he denies hat the said stock was purchased or acquired in pursuance of any onspiracy or combination or for any of the purposes alleged in said etition.

(3) He admits on information that thereafter, to wit, on or abo
the 26th day of February, 1902, defendant Union Pacific Railro
Company sold and delivered the said 750,000 shares of th
1129 stock of the Southern Pacific Company to defendant Oreg
Short Line Railroad Company, which has ever since own
and still owns the same.

(4) He admits on information that thereafter, to wit, on or abo
the 31st day of May, 1902, defendant Oregon Short Line Railro
Company acquired by purchase from said Kuhn, Loeb & Co. 150,0
additional shares of stock of said Southern Pacific Company, whi
said Oregon Short Line Railroad Company has ever since own
and which it still owns.

(5) He admits on information that thereafter when, on or abo
the 20th day of July, 1904, defendant Southern Pacific Compa
created an issue of preferred stock which it offered to its stockhold
for subscription, said Oregon Short Line Railroad Company as t
owner of 900,000 shares of the common stock of said Southern P
cific Company, exercised its right and subscribed for and receiv
and has ever since owned and still owns, 180,000 shares of the p
ferred stock of said Southern Pacific Company; and that thereaft
in July, 1907, when said Southern Pacific Company increased i
said preferred stock by an additional issue thereof which it offe
to the holders of its outstanding stock for subscription, said Oreg
Short Line Railroad Company, as the owner of 1,080,
1130 shares of the stock of said Southern Pacific Company, ex
cised its right and subscribed for and received 162,000 ad
tional shares of the preferred stock of said Southern Pacific Co
pany, and has ever since owned, and still owns, the same, so th
said Oregon Short Line Railroad Company now owns 900,000 sha
of common stock and 342,000 shares of preferred stock, making
total of 1,242,000 shares of the capital stock of said Southern Pac
Company, out of a total of 2,726,498 shares issued and outstandi

(6) He denies that the said preferred stock was issued by s
Southern Pacific Company, or that any of the common stock of s
company was acquired or has been held by said Oregon Short Li
Railroad Company or the Union Pacific Railroad Company, in p
suance of any combination or conspiracy or for any of the purpo
or with the intent alleged in said petition.

(7) He admits on information that at the annual meeting of t
Southern Pacific Company held the 3d day of April, 1901, and
every meeting of the stockholders of said company since said da
the stock so acquired and owned by said Oregon Short Line R
road Company has constituted a majority of the shares represe
at such meetings; and he admits that by voting upon the s

1131 shares, through its duly authorized agents and proxies, and by the voting by the same agents and proxies, upon shares of other stockholders of said Southern Pacific Company, delegated to it, the defendant Oregon Short Line Railroad Company has been able to elect the directors of said Southern Pacific Company; but he is informed and believes that at no such meeting have any votes ever been cast by any stockholder against the persons so elected.

(8) He admits on information that the stock of said Southern Pacific Company not owned by defendant Oregon Short Line Railroad Company is owned by a large number of individuals, firms, and corporations residing in many different places; but he denies that said stockholders are or will be unable to elect the directors of said Southern Pacific Company, if they should deem it to their interest to do so, in opposition to those voted for by said Oregon Short Line Railroad Company; and he avers that the reason why said stockholders have not heretofore elected the directors of said company is that they have been satisfied with the directors nominated and elected by the agents and proxies of said Oregon Short Line Railroad Company in conjunction with the agents or proxies of other stockholders and their management of said company.

1132 (9) He denies that the Union Pacific Railroad Company or the Oregon Short Line Railroad Company controls or has ever controlled the management, operation, and business affairs of said Southern Pacific Company or exercised any control whatsoever over it, except such as lawfully and proportionately results from the voting upon the stock of said Southern Pacific Company owned by said Oregon Short Line Railroad Company at meetings of the stockholders for the election of directors of said Southern Pacific Company.

(10) He admits that since April 9, 1901, a majority of the persons who have been directors of said Southern Pacific Company were at the same time directors of said Union Pacific Railroad Company.

(11) He disclaims personal knowledge as to the alleged competition between the steamship and railroad lines and asks that petitioner be put upon proof of such averments, if they be material or pertinent to any lawful inquiry in this case.

(12) He avers, on information, that the acquisition by the Union Pacific Railroad Company and Oregon Short Line Railroad Company of 750,000 shares of the stock of said Southern Pacific Company in 1901, and of said additional 150,000 shares of such

1133 stock in 1902 by defendant Oregon Short Line Railroad Company, were actual purchases of said stock, made in good faith, and were completed and fully executed by the delivery of the certificates for said 750,000 shares in 1901 and for said 150,000 shares in

1902 and by the payment of the price therefor at the time of such delivery; that the acquisition of the preferred stock of said Southern Pacific Company by defendant Oregon Short Line Railroad Company, as aforesaid, by the exercise of subscription rights, did not and has not changed the relative voting strength of position of the said Oregon Short Line Railroad Company from what it was upon the completion of the purchase of said two lots aggregating 900,000 shares of the common stock of the Southern Pacific Company as aforesaid.

(13) He denies all the allegations of Subdivision IV of the petition, respecting the said Schiff, Kahn, Harriman, Union Pacific Railroad Company, and this defendant, and of any conspiracy or combination among them for any of the purposes or with any of the intents alleged, and denies each and every allegation of Paragraph IV of said petition not herein expressly admitted.

V. (1) He denies, on information, that the said Schiff,
1134 Kahn, Harriman, Stillman, Union Pacific Railroad, or any of them, in the spring of 1901, or at any other time, caused the Union Pacific Railroad Company to acquire a majority of the stock of the Northern Pacific Railway Company pursuant to any conspiracy to restrain trade and commerce among the several States and with foreign nations, or to monopolize or attempt to monopolize such trade and commerce, or to suppress any competition; and he denies all the allegations of Subdivision V of the petition respecting any conspiracy or combination for any purpose between any of the defendants to this suit.

(2) He admits on information that in the year 1901 said Oregon Short Line Railroad Company purchased $37,023,000, par value, of the common stock and $41,085,000, par value, of the preferred stock of the Northern Pacific Railway Company, and that at the time of such purchase the total stock of the Northern Pacific Railway Company issued and outstanding was of the aggregate par value of $155,000,000.

(3) He admits on information the sale and transfer of said stock to the Northern Securities Company, and the receipt by said Oregon Short Line Railroad Company of $82,491,841, par value, of the stock of said Northern Securities Company.

(4) He admits the commencement of a suit by the United
1135 States of America against said Northern Securities Company and others, and the decision of said suit as alleged in the petition.

(6) He is informed that defendant Oregon Short Line Railroad Company, upon the final decision of said suit, proceeded from time to time to sell the stock of the Northern Pacific Railway Company and of the Great Northern Railway Company so received by it

opportunity to sell the same advantageously appeared; and that by such sales the amount of such stock so held has been steadily reduced, so that at the date of the commencement of this suit the said Oregon Short Line Railroad Company had sold all but 32,516 shares of the stock of the Great Northern Railway Company and all but 38,745 shares of the stock of the Great Northern Railway Company, which it still owns, but with no intent to restrain or monopolize interstate or foreign commerce or any part thereof.

(7) This defendant was not a party to the litigation which was begun in the Circuit Court of the United States for the District of New Jersey, referred to in Paragraph V of the petition; but, on information and belief, he denies that the litigation was prose-
1136 cuted, as alleged in the petition, for the purpose of effectuating the said conspiracy so originally entered into to restrain trade and commerce, smother competition, and monopolize trade and commerce among the several States and with foreign nations.

VI. This defendant denies any and every averment contained in Paragraph VI of the petition, which charges that this defendant was a party to or aided or abetted in any alleged conspiracy or unlawful combination. As to the other averments contained in said paragraph, this defendant has no personal knowledge or recollection which enables him to either admit or deny them, and he asks that the petitioner be put upon proof of the same, if the same averments be material and pertinent to any lawful inquiry before this court.

VII. (1) He denies that pursuant to any conspiracy to restrain trade and commerce among the several States with foreign nations or to monopolize or attempt to monopolize any such trade and commerce or to restrain or prevent competition among any of said railway systems he and the defendants Schiff, Kahn, Harriman, Still-
man, and Frick, or any of them, in the year 1904, or at any
1137 other time, made large purchases of stock of the Atchison, Topeka and Santa Fe Railway Company, aggregating $30,000,000 par value of said stock or any other amount; and he denies that he or any of the other defendants at any time demanded of any officials of the said Atchison, Topeka and Santa Fe Railway Company that any of the defendants herein should be elected directors of the Atchison, Topeka and Santa Fe Railway Company.

(2) He admits that in the year 1904 he and said Frick were elected directors of the Atchison, Topeka and Santa Fe Railway Company, and have since served, and are still serving, as such directors; but he denies that they were so elected for any of the reasons alleged in Subdivision VII of the petition herein, and denies that by means of such election the defendant Union Pacific Railroad Company has had knowledge of the affairs and business of said the Atchison, Topeka and Santa Fe Railway Company. This defendant avers that

in discharging his duties as a director of the said Atchison Railroad Company he has always endeavored to protect and advance its best interests, and he has never intentionally acted adversely to such interests, either for the benefit of the Union Pacific Railroad Company or any other railroad company.

1138 (3) He admits on information that in July, 1906, defendant Oregon Short Line Railroad Company purchased, and has ever since owned, $10,000,000 par value of the capital stock of said the Atchison, Topeka and Santa Fe Railway Company out of a total issue of preferred and common stock of said company outstanding of the aggregate par value of $216,199,530, but he denies that such purchase was for any of the purposes alleged in said petition, or in furtherance of any unlawful combination or conspiracy.

(4) He denies that he or any associates of his or defendant Union Pacific Railroad Company, or all of them, have any control, partial or otherwise, of said The Atchison, Topeka and Santa Fe Railway Company.

(5) He denies that competition between the systems of railways controlled by defendant Union Pacific Railroad Company and the said The Atchison, Topeka and Santa Fe Railway Company has to any extent been eliminated.

(6) He denies that he or any other persons alleged in said petition to be "conspirators" have caused defendant Southern Pacific Company or the Atchison, Topeka and Santa Fe Railway Company to abandon any extensions, improvements, and additions to their lines in California or elsewhere.

1139 (7) He denies that the lines of railroad of the Atchison Topeka and Santa Fe Railway Company are operated in harmony with the lines of said Union Pacific Railroad Company or said Southern Pacific Company under agreements and understandings as to rates and divisions of business, and that competition between such lines has been eliminated or in anywise restricted.

(8) As to any other averments contained in the Paragraph VII of the petition not hereinbefore expressly admitted or denied, this defendant disclaims personal knowledge and asks that the petitioner be put upon proof of the same, if the same be material and pertinent to any lawful inquiry before this court.

VIII. And this defendant denies all and all manner of unlawful combination and confederacy wherewith he is by the said petition charged, without this, that if there is any other manner, cause or thing in the petition contained material or necessary for this defendant to make answer unto, and not herein or hereby well and sufficiently answered, confessed, traversed, and avoided or denied, the same is not true to the knowledge or belief of this defendant; all of which matters and things this defendant is ready and willing

1140 to aver, maintain, and prove as this honorable court shall direct, and humbly prays to be hence dismissed with his reasonable costs and charges in his behalf most wrongfully sustained.

JAMES M. BECK,
P. L. WILLIAMS,
SHEARMAN & STERLING,
Solicitors for Defendants.

1141 In the United States Circuit Court, District of Utah.

The United States of America, complainant, versus The Union Pacific Railroad Company, The Oregon Short Line Railroad Company, The Oregon Railroad & Navigation Company, The San Pedro, Los Angeles & Salt Lake Railroad Company, The Atchison, Topeka & Santa Fe Railway Company, The Southern Pacific Company, Northern Pacific Railway Company, Great Northern Railway Company, Farmers' Loan & Trust Company, Edward H. Harriman, Jacob H. Schiff, Otto H. Kahn, James Stillman, Henry H. Rogers, Henry C. Frick, and William A. Clark, defendants.

The answer of James Stillman to the bill of complaint of the United States of America.

Shearman & Sterling, attorneys for defendants. James M. Beck, P. L. Williams, of counsel.
(Filed May 2, 1908.)

1142 United States Circuit Court, District of Utah. No. 993. In Equity.

The United States of America, complainant, vs. Union Pacific Railroad Company, Oregon Short Line Railroad Company, The Oregon Railroad and Navigation Company, The San Pedro, Los Angeles and Salt Lake Railroad Company, The Atchison, Topeka and Santa Fe Railway Company, Southern Pacific Company, Northern Pacific Railway Company, Great Northern Railway Company, Farmers' Loan and Trust Company, Edward H. Harriman, Jacob H. Schiff, Otto H. Kahn, James Stillman, Henry H. Rogers, Henry C. Frick, and William A. Clark, defendants.

1143 The answer of James Stillman to the petition of the United States of America.

This defendant, protesting and objecting that he was not, when the petition was filed, nor has he since been, nor is he now a resident of the district of Utah, and that this court has not, as to him, juris-

diction of the matters and things charged in the petition, and saving unto himself all manner of benefits and advantages by way of exception or otherwise which may or can be taken to the many irregularities, errors and mistakes, imperfections and uncertainties in the petition contained, for answer to said petition, or to so much as he is advised it is necessary or material for him to make answer to, answering, says:

This defendant denies all the allegations of the petition that at any time or in any way he was a member of any group or combination of persons which controlled or sought to control, the Union Pacific Railroad Company or the Southern Pacific Company, the Atchison, Topeka & Santa Fe Railway Company, or any other railroad company named in the petition, and he denies that he ever entered into any conspiracy or aided or abetted any conspiracy which had for its object the restraint of trade and commerce among
1144 the several States or between the said States and foreign countries as carried on by the Union Pacific Railroad Company and the Southern Pacific Company, or the system of either or by any other lines of railroads or steamships as named in the petition, and he denies that in any way he ever entered into any combination or conspiracy or aided or abetted any combination or conspiracy to unlawfully deprive the public of the facilities and advantages in the carrying on of interstate and foreign trade and commerce theretofore enjoyed through the independent competition of the railway system and steamship lines named in the petition, or that he ever was a member of any unlawful combination or conspiracy whose object was to effect a virtual or substantial combination of the Union Pacific Railroad Company and any other transcontinental railway company or companies or steamship line or lines, or whose object or purpose was to place restraint on any or all competitive interstate and foreign trade and commerce, or to monopolize or attempt to monopolize the same or to suppress competition in the same as averred in the petition, or that he ever in any way was a party to or aided or abetted any such alleged combination or conspiracy. This defendant denies that he ever violated the provisions of an act of Congress
1145 approved July 2, 1890, entitled "An act to protect trade and commerce against unlawful restraints and monopolies," and asks that this denial be regarded by the court for the sake of brevity as repeated as against every allegation in said petition, which charges to the contrary as to this defendant.

For further answer, this defendant says:

This defendant is now and for a number of years has been an investor in the capital stock of the Union Pacific Railroad Company, the Southern Pacific Company, and the Atchison, Topeka & Santa Fe Railroad Company. These investments were not made with

view to exercising any control in the respective companies beyond the partial control which this defendant, in common with any stockholder, exercised in proportion to his stock holdings, and they were further made with this defendant's own means and credit, in the belief which this defendant had that the investments were legitimate ones, and that this defendant was entitled to all the rights, privileges, and profits which would lawfully and legitimately flow from such investments. These investments were not made or held with any purpose or object on the part of this defendant, either alone or in conjunction with others, to restrain competition in inter-
1146 state or foreign traffic or with any purpose or object of forming or maintaining any monopoly. This defendant avers that no monopoly in transportation has existed or is likely to exist, and that he never had any thought, purpose, or plan, either individually or in conjunction with others, to form a combination of railroads, as is charged in Paragraph IV of the petition.

This defendant became a director of the Union Pacific Railroad on the sixth day of December, 1897, and continued as such until the thirteenth day of February, 1908. As such director he has at all times acted according to his best judgment for the true and lawful interests of the said railroad and has never knowingly failed in any duty which he owed as such director, either to the railroad company or to the public.

Further answering the said petition by paragraphs, this defendant says:

I. The averments contained in the first paragraph of the petition this defendant believes to be true.

II. (1) He denies that from or at any time after January 1, 1901, he and the other defendants named in the first sentence
1147 of Paragraph II of the petition have owned or controlled a majority of the capital stock of the Union Pacific Railroad Company.

(2) He admits that he became a director of said Union Pacific Railroad Company on the 6th day of December, 1897, and continued to be a director of said company until the thirteenth day of February, 1908, when he resigned.

(3) He admits that he was a member of the executive committee of the board of directors from the 8th day of December, 1897, until the thirteenth day of February, 1908, and that the said Otto H. Kahn was a member of said committee from the 8th day of December, 1897, until the 10th day of April, 1906.

(4) He admits that during all of said time the said Jacob H. Schiff and Otto H. Kahn were and still are members of a banking firm of the city of New York, doing business under the name and style of "Kuhn, Loeb & Co.," but denies that said banking house has

been or is the "fiscal agent" of the defendant Union Pacific Railroad Company; and he admits that some of the stocks referred to in the petition were bought by said Union Pacific Railroad Company and said Oregon Short Line Railroad Company, respectively, from
1148 time to time through said banking house, and that some of the bonds issued by said companies were sold to said firm.

(5) He admits that Harriman, Schiff, Rogers, and Frick became directors and served as such, as stated in Paragraph II of said petition.

(6) As to the true meaning of the by-laws referred to by petitioner in Paragraph III, this defendant asks for greater certainty, if the inquiry be material and relevant, that the petitioner be required to formally prove the by-laws by their production, so that this court may itself determine their true meaning.

(7) He denies that pursuant to such by-laws or otherwise the said Harriman has, with the concurrence of said individual defendants other than defendant Clark, who are members of the executive committee or board of directors of said company, dominated the affairs and controlled the management of said Union Pacific Railroad Company.

III. This defendant, on information and belief, accepts and adopts the respective admissions and denials to Paragraph III of the said petition, which are contained in the joint and several answers
1149 of the Union Pacific Railroad Company, the Oregon Short Line Railroad Company, and the Oregon Railroad and Navigation Company, and he asks that such admissions, denials, and averments may be regarded as part of this answer as fully as though recited herein, they being omitted for the sake of brevity and because they are already before the court in the joint answer above referred to.

IV. (1) He denies that in the spring of 1901 or at any other time he and the defendant Schiff, Kahn, Harriman and Union Pacific Railroad Company, or any of them, conspired to restrain trade and commerce among the foreign States and between said States and several countries carried on by said Union Pacific Railroad Company and said Southern Pacific Company or any other company, or to monopolize or attempt to monopolize any such trade and commerce or to restrain or prevent competition among said railway systems or any other railway systems and said steamship lines or any other steamship lines in respect to any such commerce, or to deprive the public of the facilities and advantages in the carrying on of such trade and commerce through the independent competition, if any there was, of said railway systems and steamship lines or
1150 other railway systems or steamship lines, or that he and the said defendants, or any of them, ever entered into a con-

ation or conspiracy for a virtual or substantial consolidation of aid Union Pacific Railroad Company and any other transconti- ental railway companies or steamship companies, or to place re- traint upon any competitive commerce, if any such there was, car- ied on by such companies, or to monopolize or attempt to monopo- ize the same, or to suppress any competition existing between any f said companies or lines.

(2) He admits on information that on the 20th day of February, 901, defendant Union Pacific Railroad Company acquired by pur- hase from said firm of Kuhn, Loeb & Co. 750,000 shares of the apital stock of said Southern Pacific Company of the aggregate par alue of $75,000,000 out of 1,978,399 shares of the aggregate par value f $197,839,900 then issued and outstanding, but he denies that the id stock was purchased or acquired in pursuance of any conspiracy combination or for any of the purposes alleged in said petition.

(3) He admits on information that thereafter, to wit, on or about the 26th day of February, 1902, defendant Union Pacific Rail- 51 road Company sold and delivered the said 750,000 shares of the stock of Southern Pacific Company to defendant Oregon hort Line Railroad Company, which has ever since owned and still ns the same.

(4) He admits on information that thereafter, to wit, on or about e 31st day of May, 1902, defendant Oregon Short Line Railroad mpany acquired by purchase from said Kuhn, Loeb & Co. 150,000 ditional shares of stock of said Southern Pacific Company, which id Oregon Short Line Railroad Company has ever since owned d which it still owns.

(5) He admits on information that thereafter, when, on or about e 20th day of July, 1904, defendant Southern Pacific Company ated an issue of preferred stock which it offered to its stockholders subscription at par, said Oregon Short Line Railroad Company the owner of 900,000 shares of the common stock of said Southern cific Company exercised its right and subscribed for and received d has ever since owned and still owns 180,000 shares of the pre- red stock of said Southern Pacific Company; and that thereafter, July, 1907, when said Southern Pacific Company increased its said ferred stock by an additional issue thereof which it offered to the holders of its outstanding stock for subscription at par, said 2 Oregon Short Line Railroad Company as the owner of 1,080,000 shares of the stock of said Southern Pacific Company rcised its right and subscribed for and received 162,000 addi- al shares of the preferred stock of said Southern Pacific Com- y, and has ever since owned and still owns the same; so that said gon Short Line Railroad Company now owns 900,000 shares of

common stock and 342,000 shares of preferred stock, making a to
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(6) He denies that the said preferred stock was issued by
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1904, or at any other time, made large purchases of stock of th

Atchison, Topeka and Santa Fe Railway Company, aggregating $30,000,000 par value of said stock or any other amount; and he denies that he or any of the other defendants at any time demanded of any officials of the said the Atchison, Topeka and Santa Fe Railway Company that any of the defendants herein should be elected directors of the Atchison, Topeka and Santa Fe Railway Company.

(2) He admits on information that in the year 1904 the defendants Frick and Rogers were elected directors of the Atchison, Topeka and Santa Fe Railway Company, and have since served and are still serving as such directors; but he denies that they were so elected for any of the reasons alleged in Subdivision VII of the petition herein, and denies that by means of such election the defendant Union Pacific Railroad Company has had knowledge of the affairs and business of said The Atchison, Topeka and Santa Fe Railway Company.

(3) He admits on information that in July, 1906, defendant 160 Oregon Short Line Railroad Company purchased, and has ever since owned, $10,000,000 par value of the capital stock of said The Atchison, Topeka and Santa Fe Railway Company out of total issue of preferred and common stock of said company outstanding of the aggregate par value of $216,199,530, but he denies that such purchase was for any of the purposes alleged in said petition or in furtherance of any unlawful combination or conspiracy.

(4) He denies that he or any associates of his or defendant Union Pacific Railroad Company, or all of them, have any control, partial or otherwise, of said The Atchison, Topeka and Santa Fe Railway Company.

(5) He denies that competition between the systems of railway controlled by defendant Union Pacific Railroad Company and by said The Atchison, Topeka and Santa Fe Railway Company has to any extent been eliminated.

(6) He denies that he or any other persons alleged in said petition to be "conspirators" have caused defendant Southern Pacific Company or the Atchison, Topeka and Santa Fe Railway Company to abandon any extensions, improvements, and additions to their lines in California or elsewhere.

(7) He denies that the lines of railroad of the Atchison, 161 Topeka and Santa Fe Railway Company are operated in harmony with the lines of said Union Pacific Railroad Company or said Southern Pacific Company under agreements and understandings as to rates and divisions of business, and that competition between such lines has been eliminated or in any wise restricted.

(8) As to any other averments contained in the Paragraph VII of the petition, not hereinbefore expressly admitted or denied, this defendant disclaims personal knowledge and asks that the petitioner

be put upon proof of the same, if the same be material and pertinent to any lawful inquiry before this court.

VIII. And this defendant denies all and all manner of unlawful combination and confederacy wherewith he is by the said petition charged, without this, that if there is any other manner, cause, or thing in the petition contained material or necessary for this defendant to make answer unto, and not herein or hereby well and sufficiently answered, confessed, traversed, and avoided or denied, the same is not true to the knowledge or belief of this defendant; all of which matters and things this defendant is ready and willing to aver, maintain, and prove as this honorable court shall direct,

1162 and humbly prays to be hence dismissed with his reasonable costs and charges in his behalf most wrongfully sustained.

JAMES M. BECK,
P. L. WILLIAMS,
SHEARMAN & STERLING,
Solicitors for Defendants.

1163 No. 993. In the United States Circuit Court, District of Utah.

The United States of America, complainant, versus Union Pacific Railroad Company, Oregon Short Line Railroad Company, The Oregon Railroad & Navigation Company, The San Pedro, Los Angeles & Salt Lake Railroad Company, The Atchison, Topeka & Santa Fe Railway Company, Southern Pacific Company, Northern Pacific Railway Company, The Great Northern Railway Company, The Farmers' Loan & Trust Company, Edward H. Harriman, Jacob H. Schiff, Otto H. Kahn, James Stillman, Henry H. Rogers, Henry C. Frick, and William A. Clark, defendants.

Joint and several answer of Jacob H. Schiff and Otto H. Kahn to the original petition of the United States of America.

CRAVATH, HENDERSON & DE GERSDORFF,
Attorneys for Defendants Schiff and Kahn.
PAUL D. CRAVATH,
P. L. WILLIAMS,
Of Counsel.

(Filed May 13, 1908.)

164 United States Circuit Court, District of Utah.

No. 993. In equity.

The United States of America, complainant, vs. Union Pacific Railroad Company, Oregon Short Line Railroad Company, The Oregon Railroad and Navigation Company, The San Pedro, Los Angeles and Salt Lake Railroad Company, The Atchison, Topeka and Santa Fe Railway Company, Southern Pacific Company, Northern Pacific Railway Company, The Great Northern Railway Company, The Farmers' Loan and Trust Company, Edward H. Harriman, Jacob H. Schiff, Otto H. Kahn, James Stillman, Henry H. Rogers, Henry C. Frick, and William A. Clark, defendants.

165 The joint and several answer of the defendants Jacob H. Schiff and Otto H. Kahn to the original petition of the United States of America.

These defendants now and at all times hereafter saving and reserving to themselves all and all manner of benefit and advantages of exception or otherwise that can or may be had or taken to the many errors, uncertainties, and other imperfections in the complainant's petition contained, for their joint and several answer thereunto, or to so much and such parts thereof as they are advised it is material or necessary for them to make answer unto, answering, say:

I. These defendants deny that they or either of them ever knowingly violated the provisions of an act of Congress approved July 2nd, 1890, entitled "An act to protect trade and commerce against unlawful restraints and monopolies." They deny all the allegations of the petition, charging that they or either of them were connected with or concerned in any combination or conspiracy which had for its object the restraint of trade and commerce among the several States or between the said States and foreign countries or any unlawful combination or arrangement of any kind whatsoever

166 between the defendant Union Pacific Railroad Company and the defendant Southern Pacific Company or affecting any portion or portions of the system of said Union Pacific Railroad Company and any portion or portions of the system of said Southern Pacific Company, or any railroad companies or railroad lines whatsoever. They aver that all of the transactions between the firm of Kuhn, Loeb & Co. and said Union Pacific Railroad Company or the Oregon Short Line Railroad Company alleged in the petition, in so far as such transactions occurred, were, so far as said firm of Kuhn, Loeb & Co. and these defendants were concerned, in the ordinary

course of their business as bankers, and were not part of or in any manner connected with any conspiracy or combination of any kind whatsoever between the said firm of Kuhn, Loeb & Co. or these defendants or either of them and any other person or persons or corporation or corporations whatsoever. They aver that in voting as directors of said Union Pacific Railroad Company, and in the case of the defendant Kahn, as a member of the executive committee of the board of directors of said company, in favor of any transactions on the part of said company, they so voted because they deemed such transactions to be lawful and advantageous to said company;
1167 and they aver that in all their actions as directors of said company they were guided solely by their best judgment as to the best interests of said company. They aver that they and the firm of Kuhn, Loeb & Co. have voted such shares of stock of The Union Pacific Railroad Company as they from time to time have held in such manner as seemed to them to be for the best interests of the company and its shareholders. They aver that on February 26, 1906, both of these defendants resigned from the board of directors of the Union Pacific Railroad Company; that such resignations were duly accepted by the board of directors of said company on April 10, 1906; and that since said resignations they have had no connection with or voice in the management of said company or of any of the other railroad companies mentioned in the petition; and for that reason these defendants aver that they are not proper parties defendant to this suit. And further answering the petition these defendants say:

II. They admit that the defendant Jacob H. Schiff was a director of said Union Pacific Railroad Company from March 1, 1898, until February 26, 1906, when he resigned; and that the defendant Otto H. Kahn became a director of said company on July 1, 1897, and
1168 a member of the executive committee of the board of directors of said company on December 8, 1897, and continued to be a director of said company and a member of said committee from said respective dates until February 26, 1906, when he resigned.

III. They admit that during all of the period alleged in the petition the defendants Jacob H. Schiff and Otto H. Kahn were, and still are, members of a banking firm doing business in the city of New York under the firm name and style of Kuhn, Loeb & Co., and they admit that many, although by no means all, of the purchases and sales of shares of stock and bonds mentioned in said petition were made from or to or through the instrumentality of said firm; but they deny that said firm of Kuhn, Loeb & Co. were ever appointed as or held the office of "fiscal agent" of said Union Pacific Railroad Company, and they deny that while these defendants were members of its board of directors said company appointed any person, partnership, or corporation as its fiscal agent or agents.

They deny that during the time when they were directors of said company, or when either of them was a director thereof, the
1169 by-laws of said Union Pacific Railroad Company respecting the power of the executive committee of its board of directors and the power and authority of the chairman of said executive committee were in the form or of the legal effect alleged in Subdivision II of the petition; and for the provisions of said by-laws in respect of the power and authority of the executive committee and the chairman of the executive committee during said period these defendants respectfully refer to the records of said corporation.

They deny that, pursuant to the by-laws of said corporation or otherwise, the defendant Harriman at any time while these defendants were directors, or either of them was a director, of said Union Pacific Railroad Company, with or without a concurrence and assistance of the individual defendants in this suit, other than defendant Clark, who were members of the executive committee or the board of directors of said company, dominated the affairs and controlled the management of said company, and they allege that while these defendants were members of the board of directors of said corporation its by-laws in respect to the powers and duties of its officers were such as are usually adopted by large railroad corpora-
1170 tions. They have no knowledge as to the control of the management of said company or as to its by-laws since they ceased to be directors thereof.

IV. They deny that from and after January 1, 1901, or at any time, they, or either of them, and the defendants, Edward H. Harriman and James Stillman, together with Henry H. Rogers and Henry C. Frick, or any of them, or with any other person or persons who joined with them, have owned or controlled a majority of the capital stock of the defendant Union Pacific Railroad Company.

They admit that the said Edward H. Harriman was the chairman of the executive committee of the board of directors of said Union Pacific Railroad Company from January 1, 1901, to February 26, 1906, when these defendants resigned as directors thereof, and that he was the president of said corporation from January, 1904, to said February 26, 1906; they are informed and believe that the said Harriman, since said February 26, 1906, has been and still is the chairman of said board of directors and the president of said corporation.

V. They admit the ownership by said Union Pacific Rail-
1171 road Company, Oregon Short Line Railroad Company, the Oregon Railroad and Navigation Company, and Southern Pacific Company, respectively, of capital stock of other companies, as alleged in subdivision III of the petition, from January 1, 1901, to February 26, 1906, when these defendants resigned as directors of said Union Pacific Railroad Company; but they deny that ever prior

to said February 26, 1906, said Union Pacific Railroad Company managed said Oregon Short Line Railroad Company or the said Oregon Railroad and Navigation Company. They deny that said Union Pacific Railroad Company controlled said corporations or either of them except to the extent of voting its stock in said corporations for the election of members of their boards of directors, but these defendants aver that each of those companies controlled and managed its own railroads and other property in its own name and by its own officers and agents.

These defendants have no knowledge or information sufficient to form a belief as to the allegations of Subdivision III of the petition respecting alleged competition between the various companies; but they aver that, if there was any competition between any railroad lines or steamship lines alleged to be controlled by the South-
1172 ern Pacific Company and the lines alleged to be controlled by the Union Pacific Railroad Company, such competition was not of such a character as to render illegal the acquisition of stock of the Southern Pacific Company by the Union Pacific Railroad Company or by the Oregon Short Line Railroad Company.

VI. They deny that in the spring of 1901, or at any other time, they, or either of them, and the defendants Harriman, Stillman, and Union Pacific Railroad Company, or any of them, conspired to restrain the trade and commerce among the several States and between said States and foreign countries, carried on by said Union Pacific Railroad Company and said Southern Pacific Company or any other company, or to monopolize or attempt to monopolize any such trade and commerce, or to restrain or prevent competition among said railway systems or any other railway systems, and said steamship lines or any other steamship lines, in respect to any such trade and commerce; or to deprive the public of the facilities and advantages in the carrying on of such interstate and foreign trade and commerce through the independent competition, if any there was, of said railway systems and steamship lines or other railway systems or steamship
1173 lines; or that they or either of them and the said defendants or any of them ever entered into a combination or conspiracy to effect a virtual or substantial consolidation of said Union Pacific Railroad Company and any other transcontinental railway companies or steamship companies, or to place restraint upon any competitive commerce, if any such there was, carried on by such companies, or to monopolize or attempt to monopolize the same, or to suppress any competition existing between any of said companies or lines by the means alleged in the petition or otherwise.

They admit that in February, 1901, said firm of Kuhn, Loeb & Co. acquired 750,000 shares of the capital stock of said Southern Pacific Company, of the aggregate par value of $75,000,000, out of 1,978,800

shares, of the aggregate par value of $197,839,900, then issued and outstanding, with the expectation of offering to said Union Pacific Railroad Company an opportunity of purchasing said shares of stock; they admit that said firm subsequently sold said stock to said Union Pacific Railroad Company (these defendants not voting upon the purchase as directors of said Union Pacific Railroad Company),

but they deny that the said stock was acquired or sold by said
1174 firm in pursuance of any conspiracy or combination or for any of the purposes alleged in said petition.

They admit that thereafter, to wit, on or about the 31st day of May, 1902, said Kuhn, Loeb & Co. sold to defendant Oregon Short Line Railroad Company 150,000 additional shares of stock of said Southern Pacific Company; but they deny that the said additional shares were acquired or sold by said firm in pursuance of any conspiracy or combination or for any of the purposes alleged in the petition.

They admit that thereafter, to wit, in 1904, defendant Southern Pacific Company created an issue of preferred stock which it offered to its stockholders for subscription pro rata at par, but they deny that these defendants, or either of them, and the defendants Harriman, Stillman, and said Union Pacific Railroad Company, or any of them, caused said issue of preferred stock. They admit that said Oregon Short Line Railroad Company, as the owner of 900,000 shares of the common stock of said Southern Pacific Company, exercised its right and subscribed for and received 180,000 shares of the preferred stock of said Southern Pacific Company of the par value of $18,000,000.

They deny that the said preferred stock was issued by said
1175 Southern Pacific Company or that any of the common or preferred stock of said company was acquired by said Oregon Short Line Railroad Company or the Union Pacific Railroad Company in pursuance of any combination or conspiracy with which either of these defendants was in any way connected, or for any of the purposes or with the intent on the part of these defendants or either of them as alleged in said petition.

They deny that ever, prior to February 26, 1906, when these defendants resigned as directors of said Union Pacific Railroad Company, said Union Pacific Railroad Company or said Oregon Short Line Railroad Company controlled the management, operation, or business affairs of said Southern Pacific Company or exercised any control whatsoever over it, except such as may have resulted from the voting upon the stock of said Southern Pacific Company owned by said Oregon Short Line Railroad Company at meetings of the stockholders for the election of directors of said Southern Pacific Company. They have no knowledge or information sufficient to form

a belief as to whether said companies have, or either of them has, controlled the management or operation or business affairs of said Southern Pacific Company at any time since said date.

They admit that at the annual meetings of the stock-
1176 holders of the Southern Pacific Company from the time the stock was so acquired and owned by said Oregon Short Line Railroad Company until February 26, 1906, when these defendants resigned as directors of said Union Pacific Railroad Company, such stock constituted a majority of the shares represented at such meetings, though not a majority of the entire capital stock of said company; and they admit that by voting upon the said shares, through its duly authorized agents and proxies, aided by the votes upon other shares owned by a large number of other stockholders of said Southern Pacific Company, the defendant Oregon Short Line Railroad Company was able to elect the directors of said Southern Pacific Company; but they aver that at none of said meetings were any votes cast by any stockholder against the persons so elected. They have no knowledge or information sufficient to form a belief as to the voting of said stock since said February 26, 1906.

They deny that the stock of the Southern Pacific Company so acquired and owned by defendant Oregon Short Line Railroad Company ever was or is voted at the dictation or instance of these defendants, or either of them, or at the dictation or instance of
1177 these defendants, or either of them, acting in concert with said Union Pacific Railroad Company, Harriman, and Stillman, or any of them; or that said stock was ever voted for the purposes or ends alleged in Subdivision IV of the petition; and they deny that the directors of said Southern Pacific Company have ever been selected or caused to be elected by them, or either of them, or by them, or either of them, acting in concert with others.

They deny that competition between said Union Pacific Railroad and Southern Pacific Company with their steamship lines as set forth in the petition or otherwise, if any such competition ever existed, has been destroyed or that any interstate or foreign commerce which at any time was the subject of competition was ever, while these defendants were directors of said Union Pacific Railroad Company, monopolized in the hands or under the control of said company and subsidiary corporations and its officials, or any of them.

They deny each and every allegation of Subdivision IV of the petition respecting these defendants and each every allegation therein respecting any conspiracy or combination between these defendants, or either of them, and said Harriman, Stillman, and Union Pacific Railroad Company, or any of them, for any of the purposes
1178 or with any of the intents or results alleged.

VII. They deny that they, or either of them, and the said Harriman, Stillman, Union Pacific Railroad, or any of them, in the spring of 1901 or at any other time, caused the Union Pacific Railroad Company to acquire a majority of the stock of the Northern Pacific Railway Company, or any other amount thereof, pursuant to any conspiracy to restrain trade and commerce among the several States and with foreign nations, or to monopolize or attempt to monopolize such trade and commerce, or to suppress any competition; and they deny all the allegations of Subdivision V of the petition respecting any conspiracy or combination for any purpose between these defendants, or either of them, and any of the defendants to this suit.

They admit that in the year 1901 said Oregon Short Line Railroad Company purchased $37,023,000 par value of the common stock and $11,085,000 par value of the preferred stock of the Northern Pacific Railway Company, and that at the time of such purchase the total stock of the Northern Pacific Railway Company issued and outstanding was of the aggregate par value of $155,000,000; but
1179 they deny that such purchase was in pursuance of any conspiracy or combination or for any of the purposes alleged in the petition.

They admit the incorporation of the Northern Securities Company, and also the retirement of the preferred stock by an additional issue of common stock of the Northern Pacific Railway Company as alleged in said petition.

They admit the sale and transfer of said stock to the Northern Securities Company, and the receipt by said Oregon Short Line Railroad Company of $82,491,871 par value of the stock of said Northern Securities Company represented by certificates issued in the name of said Harriman and of Winslow S. Pierce, who was at that time general counsel of defendant Union Pacific Railroad Company, and they admit that neither the said Harriman nor the said Pierce had any personal interest in said shares; but they deny that said sale was caused by these defendants or either of them, or by them or either of them acting with any other parties, and they deny that said stock of the Northern Securities Company was held by said Harriman and Pierce, pursuant to any conspiracy to which these defendants were parties, or either of them was a party.

They admit the commencement of a suit by the United
1180 States of America against said Northern Securities Company and others, and the decision of said suit as alleged in the petition.

They admit the commencement thereafter of a suit by defendants Harriman and Oregon Short Line Railroad Company, and the said Winslow S. Pierce and the Equitable Trust Company of New York,

as alleged in the petition; and they admit that the relief sought by the complainants in said suit was denied by the decrees entered therein. But they aver that the courts by said decrees approved the distribution by the Northern Securities Company of the stock of the Northern Pacific Railway Company and the Great Northern Railway Company complained of by defendant Oregon Short Line Railroad Company and its copetitioners in said suit; and that as a result of said distribution, and of the approval of the same in said suit, the defendant Oregon Short Line Railroad Company during the year 1904 received from the Northern Securities Company, as the interest and share of said Oregon Short Line Railroad Company of the assets so distributed, 281,828 shares, being 18.18 per cent of the capital stock of the Northern Pacific Railway Company; and 216,536 shares, being 17.32 per cent of the capital stock of the Great Northern Railway Company; and that no doubt as to the right of

1181 said Oregon Short Line Railroad Company to so receive and hold the said shares was intimated by any of the courts in such suit. They deny that they were parties, or either of them was a party, to said suit, and deny that they, or either of them, in any way opposed or protested against any proposed distribution of shares by said Northern Securities Company as alleged in the petition.

They aver that defendant, Oregon Short Line Railroad Company, upon the final decision of said suit, proceeded from time to time to sell the stock of the Northern Pacific Railway Company and of the Great Northern Railway Company, so received by it, as sales could be advantageously effected; but they have no knowledge or information sufficient to form a belief as to what amount of said stock has been disposed of by said Oregon Short Line Railway Company or what amount thereof, if any, it owned at the date of the commencement of this suit or now owns; they deny that said Oregon Short Line Railway Company ever held or now holds any stocks as the agent or representative of these defendants, or either of them, or of any conspirators of whom either of these defendants was one, or pursuant to any conspiracy to which these defendants were parties or either of them was a party.

1182 They deny that they, or either of them, and the said Harriman, Stillman, and Union Pacific Railroad Company, or any other persons associated with them, caused the said suit of Harriman, Pierce, Oregon Short Line Railroad Company and Equitable Trust Company of New York against said Northern Securities Company to be prosecuted for the purpose of effectuating any conspiracy to restrain trade and commerce or to smother competition or monopolize any trade or commerce as in said petition alleged.

They deny each and every allegation of said subdivision V of the petition not herein expressly admitted or respecting which the

have not stated that they have no knowledge or information sufficient to form a belief.

VIII. They have no knowledge or information sufficient to form a belief as to when or by whom or for what purpose or purposes the defendant, San Pedro, Los Angeles and Salt Lake Railroad Company, was incorporated, or as to what line or lines of railway it had acquired or was engaged in constructing prior to the year 1902.

They deny that they, or either of them, for the purpose of restraining trade and commerce among the States and with foreign
1183 nations, and monopolizing the same, or of preventing competition, or for any other purpose, brought any suit or suits or were concerned in bringing any suit or suits in the courts for the purpose of harassing or injuring the said San Pedro, Los Angeles and Salt Lake Railroad Company, or for any other purposes alleged in subdivision VI of said petition; and they deny that they made or were concerned in the making of any threats or caused any interference as in said subdivision alleged.

They deny that the contracts referred to in Subdivision VI of said petition, alleged copies of which are annexed thereto and marked, respectively, Exhibits "A" and "B", were entered into for the purpose alleged in said subdivision, and they deny that the consummation of said contracts had the results in said subdivision alleged.

They deny that they were parties, or either of them was a party, to any combination, confederation, or conspiracy for the purposes mentioned in the said subdivision or any of them; and they deny each and every allegation in said subdivision contained respecting these defendants.

IX. They deny that pursuant to any conspiracy to restrain trade and commerce among the several States and with foreign
1184 nations or to monopolize or attempt to monopolize any such trade and commerce or to restrain or prevent competition among any of said railway systems, they, or either of them, and the defendants, Harriman, Stillman, Rogers, and Frick, or any of them, in the year 1904 or at any other time, made large purchases of stock of the Atchison, Topeka and Santa Fe Railway Company, aggregating $30,000,000, par value, of said stock or any other amount; and they deny that they, or either of them, at any time demanded of or were concerned in or took part in any demand upon any officials of said The Atchison, Topeka and Santa Fe Railway Company that any of the defendants herein, or any other person or persons, should be elected directors of said company.

They deny that the defendants Frick and Rogers were elected directors of the Atchison, Topeka and Santa Fe Railway Company pursuant to any demand made by these defendants, or either of them,

or pursuant to any conspiracy to which the defendants were parties or either of them was a party, or for any other reason alleged in Subdivision VII of the petition herein.

They deny that in the summer of 1906 they, or either of them, caused or were concerned in causing the Union Pacific
1185 Railroad Company or Oregon Short Line Railroad Company to purchase $10,000,000, par value, or any other amount of the stock of the Atchison, Topeka and Santa Fe Railway Company, and have no knowledge or information sufficient to form a belief as to the purposes of the Union Pacific Railroad Company or Oregon Short Line Railroad Company in making any purchase of stock of said Atchison, Topeka and Santa Fe Railway Company, which it may have made.

They have no knowledge or information sufficient to form a belief as to the course which has been pursued by the Atchison, Topeka and Santa Fe Railway Company in respect to the matters alleged in said Subdivision VII of the petition or as to the allegations of competition between the system of railways alleged to be controlled by the Union Pacific Railroad Company and said Atchison, Topeka and Santa Fe Railway Company, or any elimination thereof, if such competition ever existed.

They deny that any of the acts or transactions alleged in Subdivision VII were the result of any conspiracy, combination, or contract to restrain commerce among the several States and with foreign countries, or were done or occurred in pursuance of any con-
1186 spiracy or combination for any purpose to which these defendants were parties or either of them was a party; and they deny each and every allegation of said Subdivision VII respecting these defendants.

X. They allege that, so far as practicable, they have confined this answer to the allegations of the petition which related to the matters and things of which these defendants have knowledge or with which they had some connection, either individually or as directors of the Union Pacific Railroad Company. As to the other allegations of the petition, they have refrained from making either admissions or denials thereon, and pray that the complainant be put upon proof of each and all of the same, if such other allegations be material or pertinent to any inquiry before this court as regards these defendants.

XI. And these defendants deny all and all manner of unlawful combination and confederacy wherewith they are in the said petition charged; without that any other matter, cause, or thing in the said petition contained, material or necessary for these defendants to make answer unto, and not herein and hereby well and sufficiently answered unto, confessed, traversed, and avoided or
1187 denied, is true to the knowledge or belief of these defendants

all of which matters and things these defendants are ready and willing to aver, maintain, and prove, as this honorable court shall direct, and humbly pray to be hence dismissed, with their reasonable costs and charges in this behalf most wrongfully sustained.

JACOB H. SCHIFF,
OTTO H. KAHN,
Defendants.
By CRAVATH, HENDERSON & DE GERSDORFF,
Their Solicitors.
PAUL D. CRAVATH,
P. L. WILLIAMS.
Of Counsel.

1188 No. 993. In the Circuit Court of the United States for the District of Utah.

The United States of America, complainant, v. the Union Pacific Railroad Company and others, defendants.

Replication of the United States to the answer of Edward H. Harriman. (Filed May 4, 1908.)

1189 In the Circuit Court of the United States for the District of Utah.

United States of America, complainant, vs. The Union Pacific Railroad Company, The Oregon Short Line Railroad Company, The Oregon Railroad & Navigation Company, The San Pedro, Los Angeles & Salt Lake Railroad Company, The Atchison, Topeka & Santa Fe Railway Company, The Southern Pacific Company, Northern Pacific Railway Company, Great Northern Railway Company, Farmers' Loan & Trust Company, Edward H. Harriman, Jacob H. Schiff, Otto H. Kahn, James Stillman, Henry H. Rogers, Henry C. Frick, and William A. Clark, defendants. No. 993. Replication.

The replication of the United States of America, complainant, to the answer of Edward H. Harriman, one of the defendants in the above-entitled action.

1190 This repliant, saving and reserving unto itself all and all manner of advantage of exception to the manifold insufficiencies of said answer, for replication thereunto saith that it will aver and prove its said bill to be true, certain, and sufficient in the law to be answered unto, and that the said answer of Edward H. Harriman, one of the defendants herein, is uncertain, untrue, and insufficient to be replied unto by this repliant; without this, that any other

matter or thing whatsoever in the said answer contained, material or effectual to be replied unto, confessed and avoided, traversed or denied, is true; all of which matters and things this repliant is and will be ready to aver and prove as this honorable court shall direct, and humbly prays as in and by its said bill it hath already prayed.

HIRAM E. BOOTH,
United States Attorney, Solicitor for Complainant.
C. A. SEVERANCE,
FRANK B. KELLOGG,
Of Counsel.

Received a copy of above replication this 4th day of May, 1908.
P. L. WILLIAMS,
Attorney for Edward H. Harriman.

1191 No. 993. In the Circuit Court of the United States for the District of Utah.

The United States of America, complainant, v. The Union Pacific Railroad Company and others, defendants.

Replication of the United States to the answer of the Southern Pacific Company. (Filed May 4, 1908.)

1192 In the Circuit Court of the United States for the District of Utah.

United States of America, complainant, vs. The Union Pacific Railroad Company, The Oregon Short Line Railroad Company, The Oregon Railroad & Navigation Company, The San Pedro, Los Angeles & Salt Lake Railroad Company, The Atchison, Topeka & Santa Fe Railway Company, The Southern Pacific Company, Northern Pacific Railway Company, Great Northern Railway Company, Farmers' Loan & Trust Company, Edward H. Harriman, Jacob H. Schiff, Otto H. Kahn, James Stillman, Henry H. Rogers, Henry C. Frick, and William A. Clark, defendants. No. 993. Replication.

The replication of the United States of America, complainant, to the answer of the Southern Pacific Company, one of the defendants in the above-entitled action.

1193 This repliant, saving and reserving unto itself all and all manner of advantage of exception to the manifold insufficiencies of said answer, for replication thereunto saith that it will aver and prove its said bill to be true, certain, and sufficient in the law to be answered unto; and that the said answer of the Southern Pacific Company, one of the defendants herein, is uncertain, untrue and insufficient to be replied unto by this repliant, without this

any other matter or thing whatsoever in the said answer contained, material or effectual to be replied unto, confessed and avoided, traversed or denied, is true; all of which matters and things this repliant is, and will be, ready to aver and prove as this honorable court shall direct; and humbly prays as in and by its said bill it hath already prayed.

HIRAM E. BOOTH,
United States Attorney, Solicitor for Complainant.
C. A. SEVERANCE,
FRANK B. KELLOGG,
Of Counsel.

Received a copy of the above replication this 4th day of May, 1908.
P. L. WILLIAMS,
Attorney for Southern Pacific Company.

1194 No. 993. In the Circuit Court of the United States for the District of Utah.

The United States of America, complainant, v. The Union Pacific Railroad Company and others, defendants.

Replication of the United States to the joint answer of the Union Pacific Railroad Company, Oregon Short Line Railroad Company, and Oregon Railroad and Navigation Company. (Filed May 4, 1908.)

1195 In the Circuit Court of the United States for the District of Utah.

United States of America, complainant, v. The Union Pacific Railroad Company, The Oregon Short Line Railroad Company, The Oregon Railroad & Navigation Company, The San Pedro, Los Angeles & Salt Lake Railroad Company, The Atchison, Topeka & Santa Fe Railway Company, The Southern Pacific Company, Northern Pacific Railway Company, Great Northern Railway Company, Farmers' Loan & Trust Company, Edward H. Harriman, Jacob H. Schiff, Otto H. Kahn, James Stillman, Henry H. Rogers, Henry C. Frick, and William A. Clark, defendants. No. 993. Replication.

The replication of The United States of America, complainant, to joint answer of Union Pacific Railroad Company, Oregon Short Line Railroad Company, and Oregon Railroad and Navi-
1196 gation Company, three of the defendants in the above-entitled action.

This repliant, saving and reserving unto itself all and all manner of advantage of exception to the manifold insufficiencies of said

answer, for replication thereunto saith that it will aver and prove t
said bill to be true, certain, and sufficient in the law to be answere
unto, and that the said answer of the Union Pacific Railroad Co
pany, Oregon Short Line Railroad Company, and the Oregon Ra
road and Navigation Company, three of the defendants herein,
uncertain, untrue, and insufficient to be replied unto by this repli
without this, that any other matter or thing whatsoever in sa
answer contained, material or effectual to be replied unto, confes
and avoided, traversed or denied, is true. All of which matters a
things this repliant is and will be ready to aver and prove as th
honorable court shall direct, and humbly prays, as in and by its sa
bill it hath already prayed.

HIRAM E. BOOTH,
United States Attorney, Solicitor for Complainant.

1197 C. A. SEVERANCE,
FRANK B. KELLOGG,
Of Counsel.

Received a copy of the foregoing replication this 4th day of M
A. D. 1908.

P. L. WILLIAMS,
Attorney for Union Pacific Railroad Company,
Oregon Short Line Railroad Company, and
Oregon Railroad and Navigation Company.

1198 No. 993. In the Circuit Court of the United States for t
District of Utah.

The United States of America, complainant, v. The Union Pac
Railroad Company and others, defendants.

Replication of the United States to the answer of William A. Cl
and the San Pedro, Los Angeles and Salt Lake Railroad Co
pany. (Filed May 4, 1908.)

1199 In the Circuit Court of the United States for the District
Utah.

United States of America, complainant, vs. The Union Pacific Ra
road Company, the Oregon Short Line Railroad Company, t
Oregon Railroad & Navigation Company, The San Pedro, L
Angeles & Salt Lake Railroad Company, The Atchison, Topek
Santa Fe Railway Company, the Southern Pacific Compa
Northern Pacific Railway Company, Great Northern Railw
Company, Farmers' Loan & Trust Company, Edward H. Har

man, Jacob H. Schiff, Otto H. Kahn, James Stillman, Henry H. Rogers, Henry C. Frick, and William A. Clark, defendants. No. 993. Replication.

The replication of the United States of America, complainant, to the answer of William A. Clark and the San Pedro, Los Angeles and Salt Lake Railroad Company, two of the defend-
1200 ants in the above-entitled action.

This repliant, saving and reserving unto itself all and all manner of advantage of exception to the manifold insufficiencies of said answer, for replication thereunto saith that it will aver and prove its said bill to be true, certain, and sufficient in the law to be answered unto, and that the said answer of the San Pedro, Los Angeles & Salt Lake Railroad Company and William A. Clark, two of the defendants herein, is uncertain, untrue, and insufficient to be replied unto by this repliant; without this that any other matter or thing whatsoever in the said answer contained, material or effectual to be replied unto, confessed and avoided, traversed or denied, is true; all of which matters and things this repliant is, and will be, ready to aver and prove as this honorable court shall direct, and humbly prays as in and by its said bill it hath already prayed.

HIRAM E. BOOTH,
United States Attorney, Solicitor for Complainant.
C. A. SEVERANCE,
FRANK B. KELLOGG,
Of Counsel.

1201 Received a copy of the above replication this 4th day of May, 1908.

PENNEL CHERRINGTON,
Attorney for San Pedro, Los Angeles & Salt Lake Rd. Co. and William A. Clark.

1202 No. 993. In the Circuit Court of the United States for the District of Utah.

The United States of America, complainant, v. The Union Pacific Railroad Company and others, defendants.

Replication of the United States to the answer of the Farmers' Loan & Trust Company. (Filed May 4, 1908.)

1203 In the Circuit Court of the United States for the District of Utah.

United States of America, complainant, vs. The Union Pacific Railroad Company, The Oregon Short Line Railroad Company, The Oregon Railroad & Navigation Company, The San Pedro, Los Angeles & Salt Lake Railroad Company, The Atchison, Topeka &

Santa Fe Railway Company, The Southern Pacific Company, Northern Pacific Railway Company, Great Northern Railway Company, Farmers' Loan & Trust Company, Edward H. Harriman, Jacob H. Schiff, Otto H Kahn, James Stillman, Henry H. Rogers, Henry C. Frick, and William A. Clark, defendants. No. 993. Replication.

The replication of the United States of America, complainant, to the answer of the Farmers' Loan & Trust Company, one of the defendants herein.

1204 This repliant saving and reserving unto itself all and all manner of advantage of exception to the manifold insufficiencies of said answer, for replication thereunto saith that it will aver and prove its said bill to be true, certain, and sufficient in the law to be answered unto, and that said answer of the Farmers' Loan & Trust Company, one of the defendants herein, is uncertain, untrue, and insufficient to be replied unto by this repliant; without this, that any other matter or thing whatsoever in the said answer contained, material or effectual to be replied unto, confessed and avoided, traversed or denied, is true; all of which matters and things this repliant is, and will be, ready to aver and prove as this honorable court shall direct, and humbly prays as in and by its said bill it hath already prayed.

HIRAM E. BOOTH,
United States Attorney, Solicitor for Complainant.
C. A. SEVERANCE,
FRANK B. KELLOGG,
Of Counsel.

Received a copy of the above replication this 4th day of May, 1908.
P. L. WILLIAMS,
Attorney for Farmers' Loan & Trust Company.

1205 No. 993. In the Circuit Court of the United States for the District of Utah.

The United States of America, complainant, v. the Union Pacific Railroad Company and others, defendants.

Replication of the United States to the answer of Henry C. Frick. (Filed May 4, 1908.)

1206 In the Circuit Court of The United States for the District of Utah.

The United States of America, complainant, vs. The Union Pacific Railroad Company; the Oregon Short Line Railroad Company; The Oregon Railroad and Navigation Company; the San Pedro

Los Angeles & Salt Lake Railroad Company; The Atchison, Topeka & Santa Fe Railway Company; The Southern Pacific Company; Northern Pacific Railway Company; Great Northern Railway Company; Farmers' Loan & Trust Company; Edward H. Harriman; Jacob H. Schiff; Otto H. Kahn; James Stillman; Henry H. Rogers; Henry C. Frick; and William A. Clark, defendants. No. 993. Replication.

The replication of the United States of America, complainant, to the answer of Henry C. Frick, one of the defendants in the above-entitled action.

1207 This repliant, saving and reserving unto itself all and all manner of advantage of exception to the manifold insufficiencies of said answer, for replication thereunto saith that it will aver and prove its said bill to be true, certain, and sufficient in the law to be answered unto, and that the said answer of Henry C. Frick, one of the defendants herein, is uncertain, untrue, and insufficient to be replied unto by this repliant; without this, that any other matter or thing whatsoever in the said answer contained, material or effectual to be replied unto, confessed and avoided, traversed or denied, is true; all of which matters and things this repliant is, and will be, ready to aver and prove as this honorable court shall direct, and humbly prays as in and by its said bill it hath already prayed.

HIRAM E. BOOTH,
United States Attorney, Solicitor for Complainant.
C. A. SEVERANCE,
FRANK B. KELLOGG,
Of Counsel.

Received a copy of above replication this 4th day of May, 1908.

P. L. WILLIAMS,
Attorney for Henry C. Frick.

1208 No. 993. In the Circuit Court of the United States for the District of Utah.

The United States of America, complainant, v. The Union Pacific Railroad Company and others, defendants.

Replication of the United States to the answer of The Atchison, Topeka & Santa Fe Railway Company. (Filed May 4, 1908.)

1209 In the Circuit Court of the United States for the District of Utah.

United States of America, complainant, vs. The Union Pacific Railroad Company, The Oregon Short Line Railroad Company, The Oregon Railroad & Navigation Company, The San Pedro, Los

Angeles & Salt Lake Railroad Company, The Atchison, Topeka & Santa Fe Railway Company, The Southern Pacific Company, Northern Pacific Railway Company, Great Northern Railway Company, Farmers Loan & Trust Company, Edward H. Harriman, Jacob H. Schiff, Otto H. Kahn, James Stillman, Henry H. Rogers, Henry C. Frick, and William A. Clark, defendants. No. 993. Replication.

The replication of the United States of America, complainant, to the answer of The Atchison, Topeka & Santa Fe Railway Company, one of the defendants in the above-entitled action.

1210 This repliant, saving and reserving unto itself all and all manner of advantage of exception to the manifold insufficiencies of said answer, for replication thereunto saith that it will aver and prove its said bill to be true, certain, and sufficient in the law to be answered unto, and that the said answer of The Atchison, Topeka & Santa Fe Railway Company, one of the defendants herein, is uncertain, untrue, and insufficient to be replied unto by this repliant without this, that any other matter or thing whatsoever in the said answer contained, material or effectual to be replied unto, confessed and avoided, traversed or denied, is true; all of which matters and things this repliant is, and will be, ready to aver and prove as this honorable court shall direct, and humbly prays as in and by its said bill it hath already prayed.

HIRAM E. BOOTH,
United States Attorney, Solicitor for Complainant.
C. A. SEVERANCE.
FRANK B. KELLOGG.
Of Counsel.

Received a copy of above replication this 4th day of May, 1908.
P. L. WILLIAMS,
Attorney for Atchison, Topeka & Santa Fe Railway Company.

1211 No. 993. In the Circuit Court of the United States for the District of Utah.

The United States of America, complainant, v. The Union Pacific Railroad Company and others, defendants.

Replication of the United States to the answer of Henry H. Rogers.
(Filed May 25, 1908.)

1212 In the Circuit Court of the United States for the District of Utah.

United States of America, complainant, vs. The Union Pacific Railroad Company; The Oregon Short Line Railroad Company; The Oregon Railroad and Navigation Company; The San Pedro, L

Angeles & Salt Lake Railroad Company; The Atchison, Topeka & Santa Fe Railway Company; The Southern Pacific Company; Northern Pacific Railway Company; Great Northern Railway Company; Farmers' Loan & Trust Company; Edward H. Harriman; Jacob H. Schiff; Otto H. Kahn; James Stillman; Henry H. Rogers; Henry C. Frick; and William A. Clark, defendants. No. 993. Replication.

The replication of the United States of America, complainant, to the answer of Henry H. Rogers, one of the defendants in the above-entitled action.

1213 This repliant, saving and reserving unto itself all and all manner of advantage of exception to the manifold insufficiencies of said answer, for replication thereunto saith that it will aver and prove its said bill to be true, certain, and sufficient in the law to be answered unto, and that the said answer of the said Henry H. Rogers, one of the defendants herein, is uncertain, untrue, and insufficient to be replied unto by this repliant; without this, that any other matter or thing whatsoever in the said answer contained, material, or effectual to be replied unto, confessed and avoided, traversed, or denied, is true; all of which matters and things this repliant is, and will be, ready to aver and prove as this honorable court shall direct, and humbly prays as in and by its said bill it hath already prayed.

HIRAM E. BOOTH,
United States Attorney, Solicitor for Complainant.
C. A. SEVERANCE,
FRANK B. KELLOGG,
Of Counsel.

Received a copy of above replication this 25th day of May, 1908.
P. L. WILLIAMS,
Attorney for Henry H. Rogers.

1214 No. 993. In the Circuit Court of the United States for the District of Utah.

The United States of America, complainant, *v.* The Union Pacific Railroad Company and others, defendants.

Replication of the United States to the answer of James Stillman. (Filed May 25, 1908.)

1215 In the Circuit Court of the United States for the District of Utah.

United States of America, complainant, vs. The Union Pacific Railroad Company, The Oregon Short Line Railroad Company, The Oregon Railroad and Navigation Company, The San Pedro, Los

Angeles & Salt Lake Railroad Company, The Atchison, Topeka & Santa Fe Railway Company, The Southern Pacific Company, Northern Pacific Railway Company, Great Northern Railway Company, Farmers Loan & Trust Company, Edward H. Harriman, Jacob H. Schiff, Otto H. Kahn, James Stillman, Henry H. Rogers, Henry C. Frick, and William A. Clark, defendants. No. 993. Replication.

The replication of the United States of America, complainant, to the answer of James Stillman, one of the defendants in the above-entitled action.

1216 This repliant, saving and reserving unto itself all and all manner of advantage of exception to the manifold insufficiencies of said answer, for replication thereunto saith that it will aver and prove its said bill to be true, certain, and sufficient in the law to be answered unto, and that the said answer of James Stillman, one of the defendants herein, is uncertain, untrue, and insufficient to be replied unto by this repliant; without this, that any other matter or thing whatsoever in the said answer contained, material or effectual to be replied unto, confessed and avoided, traversed or denied, is true; all of which matters and things this repliant is, and will be, ready to aver and prove as this honorable court shall direct, and humbly prays as in and by its said bill it hath already prayed.

HIRAM E. BOOTH,
United States Attorney,
Solicitor for Complainant.
C. A. SEVERANCE,
FRANK B. KELLOGG,
Of counsel.

Received a copy of the above replication this 25th day of May, 1908.

P. L. WILLIAMS,
Attorney for James Stillman.

1217 No. 993. In the Circuit Court of the United States for the District of Utah.

The United States of America, complainant, v. The Union Pacific Railroad Company and others, defendants.

Replication of the United States to the answer of Jacob H. Schiff and Otto H. Kahn. (Filed May 25, 1908.)

1218 In the Circuit Court of the United States for the District of Utah.

United States of America, complainant, vs. The Union Pacific Railroad Company, The Oregon Short Line Railroad Company, The Oregon Railroad and Navigation Company, The San Pedro, L

Angeles & Salt Lake Railroad Company, The Atchison, Topeka & Santa Fe Railway Company, The Southern Pacific Company, Northern Pacific Railway Company, Great Northern Railway Company, Farmers Loan & Trust Company, Edward H. Harriman, Jacob H. Schiff, Otto H. Kahn, James Stillman, Henry H. Rogers, Henry C. Frick, and William A. Clark, defendants. No. 993. Replication.

The replication of The United States of America, complainant, to the joint and several answer of Jacob H. Schiff and Otto H. Kahn, two of the defendants in the above entitled action.

2219 This repliant saving and reserving unto itself all and all manner of advantage of exception to the manifold insufficiencies of said answer, for replication thereunto saith that it will aver and prove its said bill to be true, certain, and sufficient in the law to be answered unto, and that the said joint and several answer of Jacob H. Schiff and Otto H. Kahn, two of the defendants herein, is uncertain, untrue, and insufficient to be replied unto by this repliant; without this, that any other matter or thing whatsoever in the said answer contained, material or effectual to be replied unto, confessed and avoided, traversed or denied, is true; all of which matters and things this repliant is, and will be, ready to aver and prove as this honorable court shall direct, and humbly prays as in and by its said bill it hath already prayed.

HIRAM E. BOOTH,
United States Attorney, Solicitor for Complainant.
C. A. SEVERANCE,
FRANK B. KELLOGG,
Of Counsel.

2220 Received a copy of the above replication this 25th day of May, 1908.

P. L. WILLIAMS,
Attorney for Jacob H. Schiff and Otto H. Kahn.

2221 DEFENDANTS' EXHIBIT No. 50 (PART B), APRIL 16, 1915.

Opinion and decree of the United States Circuit Court for the District of Utah in the Union Pacific Merger suit, dated June 24, 1911.

Pursuant to stipulation at page 1928 of the testimony, this opinion and decree need not be copied into the record, but may be referred to as reported in the 188th Federal Reporter, page 102 and following.

1222 DEFENDANTS' EXHIBIT No. 50 (PART C), APRIL 16, 1915.

Opinion and decree of the United States Supreme Court rendered December 2, 1912, in the Union Pacific merger suit.

Pursuant to stipulation at page 1928 of the testimony, this opinion and decree need not be copied into the record, but may be referred to in volume 226 of the United States Reports at page 61 and following.

1223 DEFENDANTS' EXHIBIT No. 50 (PART D), APRIL 16, 1915.

Supplemental opinion and decree of the United States Supreme Court, rendered January 6, 1913, upon the motion as to form of mandate in the Union Pacific merger suit.

Pursuant to stipulation at page 1928 of the testimony, this supplemental opinion and decree need not be copied in the record, but may be referred to in volume 226 of United States Reports at page 470 and following.

1224 DEFENDANTS' EXHIBIT No. 50 (PART E), APRIL 16, 1915.

In the District Court of the United States for the District of Utah.

United States of America, complainant, v. The Union Pacific Railroad Company; The Oregon Short Line Railroad Company; The Oregon Railroad & Navigation Company; The San Pedro, Los Angeles & Salt Lake Railroad Company; The Atchison, Topeka & Santa Fe Railway Company; The Southern Pacific Company; Northern Pacific Railway Company; Great Northern Railway Company; The Farmers' Loan & Trust Company; Jacob H. Schiff; Otto H. Kahn; James Stillman; Henry C. Frick; William A. Clark; and Robert S. Lovett, as trustee, defendants. No. ——.

1225 Decree.

The above-entitled cause having duly come on for hearing before this court, and having been determined adversely to the complainant, and the said cause having been appealed to the Supreme Court of the United States, by which court the decree of this court dismissing the said bill of complaint was in part reversed, and a mandate from the Supreme Court in proper form containing directions as to the decree to be entered herein having been filed here on the 12th day of February, 1913.

Now, therefore, this cause came on to be further heard at this term, and was argued by counsel, and thereupon, upon consideration thereof, it was ordered, adjudged, and decreed as follows, viz:

SECTION 1. That the final decree entered herein on June 24, 1911, dismissing the bill be set aside so far as the same was reversed by the Supreme Court.

SEC. 2. That prior to the year 1901, and ever since said date, the defendant Union Pacific Railroad Company has controlled, by the ownership of substantially all the stock thereof, the defendant Oregon Short Line Railroad Company; and that the defendant Ore-
1226 gon Short Line Railroad Company, by the ownership of substantially all the stock thereof, has controlled the defendant Oregon Railroad & Navigation Company, which latter company has controlled, and still does, through the ownership of all the stock thereof, control the Portland & Asiatic Steamship Company; and that in the year 1901, and for several years prior thereto, said Oregon Railroad & Navigation Company had been the owner and engaged in the operation of a line of steamships between Portland, Oregon, and San Francisco, California; that it continued in the operation of the same until about the year 1904, when a corporation was organized, of which said Oregon Railroad & Navigation Company then was and still is the sole stockholder, known as the San Francisco and Portland Steamship Company, which took over the said line of ships between San Francisco and Portland, and has since been operating the same in connection with the rail lines of said Oregon Railroad & Navigation Company; and that the lines of railway and steamships of said corporations were, prior to 1901, and ever since have been, controlled and managed in all respects by the defendant Union Pacific Railroad Company; and that prior to the year 1901, and continuously since that date, the said defendant Union Pacific Railroad Company
1227 and its subsidiary corporations owned, controlled, and managed by it, have owned and have been engaged in the operation of a system of railroad and steamship lines.

SEC. 3. That the defendant Southern Pacific Company controls, by direct ownership, stock ownership, and lease a system of rail and steamship lines, and also by the ownership of a majority of its stock has, during all of said time, controlled the Pacific Mail Steamship Company, which is engaged in transportation business between the port of San Francisco and various ports in China and Japan, which ports in China and Japan were also served by said Portland and Asiatic Steamship Company.

SEC. 4. That the Central Pacific Railroad Company was organized under the laws of California, and constructed a line of railroad from Sacramento, California, to Ogden, Utah.

That the Western Pacific Railroad Company was organized under the laws of California, and constructed a line of railroad from San Francisco to Sacramento, California, and that these two latter corporations were afterwards consolidated into and became the Central Pacific Railroad Company, which was for many years engaged in the operation of said line of railroad from San Francisco to
1228 Ogden, at which point it connected with the main line of said Union Pacific Railroad Company.

That the said Southern Pacific Company was and is also the owner of all the capital stock of the Central Pacific Railway Company, a corporation organized and existing under the laws of Utah, which succeeded to the ownership of the line of railway from Ogden to San Francisco theretofore owned by the Central Pacific Railroad Company, hereinbefore particularly described; and by virtue of such ownership of all said capital stock said Southern Pacific Company in all respects controls the operation and management of the affairs and business of said Central Pacific Railway Company.

That the railways and properties formerly belonging to the said Central Pacific Railroad Company were, by indenture and agreement dated July 28, 1899, conveyed to the said Central Pacific Railway Company.

That prior thereto and on or about the 17th day of February, 1885, the said Central Pacific Railroad Company leased to the said Southern Pacific Company all of its railroad and properties for a period of ninety-nine years, which lease was threafter modified by agreements between the parties dated the first day of January,
1229 1888, and the 7th day of December, 1893, dated respectively, and the 22d day of March, 1894, and that the railroads of the said Central Pacific Railroad and said Central Pacific Railway were controlled and operated by the said Southern Pacific Company, and thereafter, and in or about the month of March, 1901, said Southern Pacific Company passed under the control of the Union Pacific Railroad Company as hereinbefore specified.

SEC. 5. That prior to the year 1901 the said systems of rail and steamship lines of the defendant Union Pacific Railroad Company and the defendant Southern Pacific Company and different portions of the same were, and but for the suppression of competition hereinafter mentioned would still be, active competitors for the transportation of large quantities of freight and passengers between the Atlantic seaboard and the Pacific coast and between various other points. That the railroad and steamship lines of said Union Pacific Railroad Company's system and said Southern Pacific Company's system are natural competitors.

SEC. 6. That in the spring of 1901 the said defendants, Jacob H. Schiff, Otto H. Kahn, and James Stillman, together with one Edward

H. Harriman, who was originally a defendant in this cause,
1230 but who has died during the pendency thereof, for the purpose of enabling the Union Pacific Railroad Company to acquire control of the railroad system of the Southern Pacific Company and thereby to form the combination herein described, caused to be acquired for transfer to the Union Pacific Railroad Company, and said company thereupon, in consummation of said plan, acquired 750,000 shares of the stock of said Southern Pacific Company of the par value of $75,000,000 out of a total issue of 1,978,477 shares of the aggregate par value of $197,847,788 then issued and outstanding (said shares being delivered to said defendant Union Pacific Railroad Company on or about March 4, 1901), so that the same might be held in the treasury of said company and voted by it for the purpose and with the intention of controlling the election of the board of directors and officers of the said Southern Pacific Company and eliminating the competition that had theretofore existed between said Union Pacific system and said Southern Pacific system.

That the said shares of stock were afterwards transferred to the Oregon Short Line Railroad Company, to be held for the use and benefit of said Union Pacific Railroad Company. That thereafter for
1231 the purpose of strengthening and completing said combination the Union Pacific Railroad Company acquired from time to time additional shares of the capital stock of the Southern Pacific Company and turned the same over to the Oregon Short Line Railroad Company to be held for the use and benefit of the Union Pacific Railroad Company, until the Oregon Short Line Railroad Company had acquired and now owns and holds 1,266,500 shares of the capital stock of said Southern Pacific Company out of a total of 2,726,724 shares issued and outstanding, or about 46% thereof.

That at each and every annual meeting of the stockholders of the Southern Pacific Company for the election of directors since said 750,000 shares of stock were so acquired the stock so held by said Union Pacific Railroad Company and said Oregon Short Line Railroad Company has constituted a majority of the shares represented at such meetings, and the directors of said Southern Pacific Company have been chosen by the vote of such stock.

That the balance of the stock of said Southern Pacific Company is scattered among a large number of stockholders, and that by reason of the fact that such stock is so scattered the full amount of the same is not and never has been voted at any meeting, for which
1232 reason the said stock of the Southern Pacific Company so controlled by said Oregon Short Line Railroad Company has constituted a majority of the stock of said Southern Pacific Company at the meetings of the stockholders thereof, and by reason of said stock ownership the said Union Pacific Railroad Company

and its said subsidiary corporation have controlled said Southern Pacific Company, and in the case of a large corporation of the character of the Southern Pacific Company a compact, united ownership of 46% of the stock is ample to control the operations of the corporation.

That since April 3, 1901, members of the board of directors of the Union Pacific Railroad Company have constituted a majority of the board of directors of said Southern Pacific Company.

That for several years last past the Union Pacific Railroad Company and its subsidiary lines and said Southern Pacific Company have had common traffic officials, operating officials, purchasing agents, and commercial agents, and the said lines of railway and steamships of said respective systems have been and are operated as a single system, and the competition that formerly existed between the said two railway systems with their steamships has been destroyed, and the interstate and foreign commerce which was
1233 formerly the subject of competition between said two systems has been in the hands and under the control of said Union Pacific Railroad Company and its subsidiary corporations and their officials.

SEC. 7. That the stocks of the Southern Pacific Company were acquired and are held by the Oregon Short Line Railroad Company by virtue of an unlawful combination to restrain trade and commerce and eliminate the competition herein described.

SEC. 8. That the defendants Union Pacific Railroad Company and Oregon Short Line Railroad Company, acting directly or through their respective officers, boards of directors, executive committees, agents, servants, or through any other person, firm, or corporation acting for or in the interest of said companies, are hereby perpetually enjoined from purchasing, acquiring, receiving, holding, voting, whether by proxy or otherwise, or in any manner acting as the owner of any of the shares of the capital stock of the Southern Pacific Company.

SECTION 9. That the defendant Southern Pacific Company, its officers, directors, servants, and agents, and all persons acting by, through, or under it, be, and they are hereby, respectively and collectively, enjoined from permitting the stock aforesaid to be
1234 voted by the Union Pacific Railroad Company, the Oregon Short Line Railroad Company, or in their behalf by their attorneys or agents or the attorneys or agents of either of them, at any meeting of the stockholders of said railway company; and said Southern Pacific Company, together with its officers, directors, servants, and agents, are likewise enjoined and respectively restrained from paying any dividends to said Union Pacific Railroad Company

or the Oregon Short Line Railroad Company, or to any person for them or either of them on account of stock in said Southern Pacific Company, which the said Oregon Short Line Railroad Company now claims to own and hold, and from paying any dividends on said stock while thus held, except to a receiver to be appointed by this court to collect and hold such dividends until disposed of by the decree of this court; and said Southern Pacific Company, its officers, directors, servants, and agents are further enjoined from permitting or suffering the Union Pacific Railroad Company, the Oregon Short Line Railroad Company, or any of its officers or agents, from exercising any control whatsoever over the corporate acts of said Southern Pacific Company.

SECTION 10. That the defendants Union Pacific Railroad Company, Oregon Short Line Railroad Company, Oregon Railroad
1235 and Navigation Company, and Southern Pacific Company, together with the officers, directors, agents, servants, employees, and all persons and corporations acting by, through, or under the corporations named in this section, are enjoined and prohibited from continuing or carrying into further effect the combination hereby adjudged illegal, either:

(a) By the use of any written evidences of a stock interest in the said Southern Pacific Company, Union Pacific Railroad Company, Oregon Short Line Railroad Company, Oregon Railroad and Navigation Company, or either of them, or by causing the conveyance of the physical property and business of the Southern Pacific Company, on the one hand, to the Union Pacific Railroad Company, the Oregon Short Line Railroad Company, the Oregon Railroad and Navigation Company, or either of them, upon the other hand, or by causing the conveyance of the physical property and business of the Union Pacific Railroad Company, the Oregon Short Line Railroad Company, the Oregon Railroad and Navigation Company, or either of them, upon the one hand, to the Southern Pacific Company, upon the other hand, or by placing the control of the Southern Pacific Company, on the one hand, and of the Union Pacific Railroad Company,
1236 the Oregon Short Line Railroad Company, and the Oregon Railroad and Navigation Company, upon the other hand, in a trustee or group of trustees, or by causing the stock in said Southern Pacific Company to be held by any person for the benefit of the said Union Pacific Railroad Company, the said Oregon Short Line Railroad Company, or any person acting in their interest, or in the interest of either of them; or

(b) By making any express or implied agreement or arrangement together, or one with another, like that hereby adjudged illegal, relative to the control or management of said Southern Pacific Company

by the said Union Pacific Railroad Company, Oregon Short Line Railroad Company, or any person acting in their interest, or from causing said companies to agree as to the rates of transportation of competitive traffic, or after the first day of May, 1913, from continuing any union of management of any sort or description, either as to operation, rates, or otherwise, between the said Southern Pacific Company, on the one hand, and the said Union Pacific Railroad Company, Oregon Short Line Railroad Company, and Oregon Railroad and Navigation Company, on the other hand, and, after said date from electing, permitting to be elected, or continuing the
1237 same person or persons as a director or officer of both the Southern Pacific Company or any of its subsidiary companies on the one hand, and the Union Pacific Railroad Company, the Oregon Short Line Railroad Company, and the Oregon Railroad and Navigation Company, or any of the subsidiaries of said companies, on the other hand, or by maintaining common agencies for the solicitation of traffic; but nothing herein contained shall be construed as prohibiting said railroad companies from entering into agreements for the joint carriage of through traffic, including the making of through rates and the running of through cars or trains as well as the granting of running rights by the one company to the other and the making of other operating and traffic arrangements such as can legally be made between connecting independent railroad corporations operating under separate managements.

And the defendant corporations, their respective officers, directors, agents, servants and employees, and the individual defendants, Jacob H. Schiff, Otto H. Kahn, and James Stillman, are enjoined and prohibited from entering into any like combination to that above described, the effect of which is or may be to restrain commerce among the States or with foreign nations in violation of the act of
1238 July 2, 1890, by any of the means aforesaid.

SECTION 11. And said defendant Oregon Short Line Railroad Company is hereby further enjoined from selling, assigning, transferring, mortgaging, or pledging any of the said stock of the Southern Pacific Company, or any certificate of interest in the stock of the last-named company, to any person or corporation except as may be authorized by this court.

And the defendant Southern Pacific Company, its officers, directors, agents, and servants, and each and every one of them, are enjoined from recognizing as valid any transfer, mortgage, pledge, or assignment by said Oregon Short Line Railroad Company, of the said shares of stock of said Southern Pacific Company unless the same shall be authorized by this court.

SECTION 12. That nothing in this decree contained shall be considered as preventing the Government, or any party to this suit, from

presenting to this court plans for the acquisition or control by the Union Pacific Railroad Company of the Central Pacific Railway Company, or of its line of railroad, so far and to such extent as shall be approved by this court. Any such plan or plans shall be
1239 filed with the clerk of this court within three months from the 12th day of February, 1913.

SECTION 13. The complainant herein is hereby granted leave at any time, by motion or by supplemental or amended bill or petition, as it may be advised, to make and bring in any additional parties, and the clerk of this court is directed to issue all the necessary and appropriate process to that end.

SECTION 14. That as directed by the said Supreme Court of the United States, the said defendants may present to this court plans for the disposition of the stock of said Southern Pacific Company, so held by said Oregon Short Line Railroad Company, within three months from the 12th day of February, 1913, the date of the filing of the mandate in this court; and the court, upon the presentation of such plans, will hear the complainant and defendants, and will bring in any additional parties whose presence may be found necessary to a final disposition of the stock in conformity with the decision of the Supreme Court. In the event that defendants shall fail to present such plans within said time, or upon the rejection by the court of the plans submitted within such time, this court will take
1240 such further steps relative to a disposition of such stock as may be necessary to carry out the provisions of this decree, jurisdiction of the cause being retained for that purpose.

SECTION 15. The bill of complaint is hereby dismissed as to the defendants, The San Pedro, Los Angeles and Salt Lake Railroad Company; The Atchison, Topeka and Santa Fe Railway Company; Northern Pacific Railway Company; Great Northern Railway Company; The Farmers' Loan and Trust Company; Henry C. Frick, William A. Clark, and Robert S. Lovett as trustee.

SECTION 16. That the complainant, United States of America, have and recover from the defendants, The Union Pacific Railroad Company, The Oregon Short Line Railroad Company, The Oregon Railroad and Navigation Company, Jacob H. Schiff, Otto H. Kahn, and James Stillman, its costs and disbursements, to be taxed by the court.

Dated February 12, 1913.

WALTER H. SANBORN,
W. C. HOOK,
WALTER I. SMITH,
United States Circuit Judges.

1241 DEFENDANTS' EXHIBIT NO. 50 (PART F), APRIL 16, 1915.

In the District Court of the United States for the District of Utah.

The United States of America, complainant, v. The Union Pacific Railroad Company; the Oregon Short Line Railroad Company; The Oregon Railroad & Navigation Company; The San Pedro, Los Angeles & Salt Lake Railroad Company; The Atchison, Topeka & Santa Fe Railway Company; The Southern Pacific Company; Northern Pacific Railway Company; Great Northern Railway Company; Farmers' Loan & Trust Company; Jacob H. Schiff; Otto H. Kahn; James Stillman; Henry C. Frick; William A. Clark; Robert S. Lovett, as trustee; Central Pacific Railway Company and Southern Pacific Railroad Company, defendants.

Final decree.

Whereas the above cause was determined by a decree of this
1242 court entered June 24, 1911, dismissing the bill, from which complainant appealed to the Supreme Court of the United States, which, in an opinion delivered December 2, 1912, reversed the decree of this court and issued its mandate filed herein February 12, 1913, remanding the cause with instructions to enter a decree and for further proceedings in conformity with its opinion, which opinion directed, among other things, that disposition of the shares of capital stock of the defendant Southern Pacific Company found to have been unlawfully acquired by the defendant Oregon Short Line Railroad Company in the interest of the defendant Union Pacific Railroad Company "shall be made subject to the approval and decree of the district court, and any plan for the disposition of this stock must be such as to effectually dissolve the unlawful combination thus created."

And further that "The court shall proceed, upon the presentation of any plan, to hear the Government and defendants, and may bring in any additional parties whose presence may be necessary to a final disposition of the stock in conformity to the views herein ex-
1243 pressed."

* * * * * * *

"And any plan or plans shall be presented to the district court within three months from the receipt of the mandate of this court, failing which, or upon the rejection by the court of plans submitted within such time, the court shall proceed by receivership and sale, if necessary, to dispose of such stock in such wise as to dissolve such unlawful combination."

And whereas thereupon, on February 12, 1913, this Court entered a decree adjudging that the shares of the defendant Southern Pacific

Company held by the defendant Oregon Short Line Railroad Company were acquired by virtue of an unlawful combination to restrain trade and commerce and enjoining the defendants Union Pacific Railroad Company and Oregon Short Line Railroad Company and their agents from voting or receiving dividends in respect thereof, and providing further, amongst other things, as follows:

"SEC. 14. That as directed by the said Supreme Court of the United States, the said defendants may present to this Court
1244 plans for the disposition of the stock of said Southern Pacific Company, so held by said Oregon Short Line Railroad Company, within three months from the 12th day of February, 1913, the date of the filing of the mandate in this Court; and the Court, upon the presentation of such plans, will hear the complainant and defendants and will bring in any additional parties whose presence may be found necessary to a final disposition of the stock in conformity with the decision of the Supreme Court. In the event that defendants shall fail to present such plans within said time, or upon the rejection by the Court of the plans submitted within such time, this Court will take such further steps relative to a disposition of such stock as may be necessary to carry out the provisions of this decree, jurisdiction of the cause being retained for that purpose."

And whereas on February 12, 1913, the defendants Union Pacific Railroad Company and Oregon Short Line Railroad Company presented a plan for the disposition of the said shares which had been approved by the Attorney General of the United States, but
1245 which was withdrawn before action thereon because of the failure of the railroad commission of the State of California to approve certain features thereof within its jurisdiction;

And whereas thereafter, with the consent of the Attorney General, the time within which to present plans was extended by the Supreme Court until July 1, 1913;

And whereas on June 5, 1913, the defendants Union Pacific Railroad Company and Oregon Short Line Railroad filed herein a petition submitting (1) a first amended plan, in substance providing for the disposition of said shares by a public subscription offering at prices and upon terms to be fixed by said defendants and with certain limitations upon the right of Union Pacific stockholders to subscribe; and (2) a second amended plan, in substance providing for the transfer of said shares to a trustee and for the offering of the trustee's nonvoting certificates of interest therein, upon terms fixed by said defendants, to Union Pacific stockholders or their assignees for subscription, which certificates of interest should be exchangeable for Southern Pacific shares upon affidavit that the applicant for such exchange owned no Union Pacific Railroad Company stock;

And whereas on June 12, 1913, the said defendants filed
1246 a petition supplementing their first amended plan and second
amended plan aforesaid by a proposal to sell to the Pennsyl-
vania Railroad Company 382,924 shares of the Southern Pacific Com-
pany in exchange for 425,472 shares of the Baltimore and Ohio Rail-
road Company;

And whereas, by petition filed herein June 30, 1913, the said de-
fendants withdrew all of the plans recited in the petitions then pend-
ing before the court and submitted their third amended plan;

And whereas complainant has filed an answer to said petition sub-
mitting said third amended plan:

Now, therefore, it is ordered, adjudged, and decreed:

SECTION 1. Said third amended plan is hereby approved in so far
and only so far as its provisions are embodied in this decree.

SECTION 2. The defendants Union Pacific Railroad Company and
Oregon Short Line Railroad Company having asked permission to
sell to the Pennsylvania Railroad Company 382,924 of the said shares
of the capital stock of the defendant Southern Pacific Company, of
the par value of $38,292,400, and to accept in exchange 425,472 shares
(half preferred and half common) of the capital stock of the
1247 Baltimore and Ohio Railroad Company, of the par value of
$42,547,200 (being all the stock of said company owned or con-
trolled by the Pennsylvania Railroad Company or any of its subsid-
iaries), and it appearing that such sale or exchange would be a sub-
stantial step toward the effectual dissolution of the particular combi-
nation now before the court, it is hereby provided and leave is
granted to effect the same: Provided, however, That neither such
approval and leave nor anything contained in this decree shall ever
be taken or construed as affecting the obligations, powers, rights, or
duties under present or future laws of any person or corporation not
a party to this cause, nor be taken or construed as an adjudication
that any defendant herein has the right to acquire or hold the shares
of stocks so sold or exchanged, nor as an exemption of any defendant
in respect of such acquisition or holding from the operation of any
law now in force or which may hereafter be enacted.

In the event of such sale immediate delivery shall be made of the
said 382,924 shares of the defendant Southern Pacific Company
which is hereby directed to cause them to be transferred on its stock
books to the Pennsylvania Railroad Company, upon presentation of
the certificates therefor duly assigned, and thereupon to pay to
1248 the defendant Oregon Short Line Railroad Company, on de-
mand, the dividends appertaining to said shares heretofore
declared and payable April 1 and July 1, 1913, respectively; and the
transaction shall be reported to the court within 30 days from the
date hereof.

SECTION 3. The Central Trust Company of New York, a corporation organized and existing under the laws of the State of New York, and hereinafter called the Trustee, having declared its submission to the jurisdiction of this court for all purposes of this cause, and having entered its appearance herein by counsel, is made a party hereto; and said Central Trust Company of New York is hereby appointed to receive and hold, as the custodian and depositary of this court, subject to the provisions of this decree and to the further orders and decrees of the court herein, all shares of the capital stock of defendant Southern Pacific Company which shall be transferred to it as hereinafter provided.

SECTION 4. The shares of the defendant Southern Pacific Company held by the defendant Oregon Short Line Railroad Company remaining after the sale to the Pennsylvania Railroad Company of 382,924 shares thereof, as hereinabove provided, to wit, 883,576 shares, or the entire holdings if such sale to the Pennsylvania Rail-
1249 road Company shall not be consummated within 30 days from the date hereof, shall be transferred forthwith to the Trustee and registered in its name on the books of the Southern Pacific Company, and certificates therefor delivered to the Trustee.

The defendants Union Pacific Railroad Company and Oregon Short Line Railroad Company shall assign or cause to be assigned to the Trustee all dividends appertaining to the shares so transferred which shall have been declared and shall be then or thereafter payable to the defendant Oregon Short Line Railroad Company or the individuals holding in its behalf as the registered stockholders entitled to such dividends. Such dividends, hereinafter designated as the "accumulated dividends", shall be collected by the Trustee and held and distributed upon the terms and conditions hereinafter provided.

SECTION 5. Prior to November 1, 1913, the defendants Union Pacific Railroad Company and Oregon Short Line Railroad Company shall offer to all stockholders of the former, common and preferred (registered as such on a date to be designated in the offer and not more than 40 days from its date), or to their assignees the right to subscribe for certificates of interest representing the said
1250 Southern Pacific Company shares transferred to the Trustee as provided hereunder substantially in the proportion of their respective holdings, with such allowance in fixing the distribution ratio as the above-named defendants may deem necessary for possible conversions of convertible bonds of the said Union Pacific Railroad Company. The offering shall include all accumulated dividends appertaining to said shares, and shall be at such price and upon such other terms as the defendants Union Pacific Railroad Company and Oregon Short Line Railroad Company shall determine, except as

specifically herein prescribed or as otherwise directed by the court by a subsequent order or decree.

The subscription price shall be payable at the time of the subscription or at the option of the subscriber, $25 per share at the time of subscription and the balance within one year thereafter, with interest on such balance at the rate of 6 per cent per annum. The subscriptions shall be filed with the Trustee.

Neither of the defendants Union Pacific Railroad Company or Oregon Short Line Railroad Company, nor any corporation controlled by either, nor any person acting in the interest of either, shall acquire by purchase or otherwise any of said certificates of
interest.

1251 The defendants, Union Pacific Railroad Company and Oregon Short Line Railroad Company, may cause the sale of said certificates of interest upon such subscription offer to be underwritten, the underwritters to agree to purchase any certificates, or such an amount thereof as shall be designated in the underwriting agreement, not subscribed for pursuant to the offer.

SECTION 6. The Trustee shall execute and issue certificates of interest representing the shares transferred to it hereunder and shall deliver them at its offices in the city of New York to the subscribers therefore under section 5 hereof, upon payment in full of the subscription price and compliance in all respects with the terms prescribed by the offering, or by any subscription receipt issued under section 7 hereof, to be performed by the subscribers to entitle them to receive such certificates of interest; and in like manner shall deliver such certificates of interest upon full payment therefor to any other purchasers t owhom the defendants, Union Pacific Railroad Company and Oregon Short Line Railroad Company, shall be authorized by the court to sell the same. All such certificates shall be registered
by the trustee in the names of the purchasers. They shall
1252 be substantially in the form hereto annexed, marked
"Form A."

SECTION 7. The Trustee shall issue part-paid subscription receipts to all subscribers who shall elect to defer payment of the balance of the subscription price, upon payment of the aforesaid initial installment thereof and due compliance in all other respects with the terms prescribed by the offering to be performed by the subscribers at the time of the subscription; and in like manner shall deliver such subscription receipts, upon payment of such initial installment of the purchase price, to any other purchasers to whom defendants, Union Pacific Railroad Company and Oregon Short Line Railroad Company, shall be authorized by the court to sell the said certificates of interest. All such subscription receipts shall be registered by the

Trustee in the names of the purchasers. They shall be substantially in the form hereto annexed, marked "Form B."

SECTION 8. The certificates of interest and subscription receipts issued hereunder may be in the denominations of 1 share, 10 shares, 50 shares, 100 shares, and such other denominations as the Trustee shall elect. The certificates of interest and subscription receipts shall be executed on behalf of the Trustee by such officer of the
1253 Trustee in the city of New York, or by such agent in London, England, as it shall authorize thereunto, and such certificates of interest may be countersigned by a trust company in the city of New York as registrar.

SECTION 9. The Trustee shall, if so requested by the registered owner of any subscription receipt issued hereunder and then outstanding, by application in writing presented at its office in the city of New York not less than 10 days prior to any annual or special stockholders' meeting of the Southern Pacific Company, execute and deliver to such registered owner, or to his nominee, a proxy appointing such attorneys, agents, and proxies as such registered owner shall nominate in his said application, to appear and vote at such stockholders' meeting upon the number of shares represented by said subscription receipt for the election of directors and upon any other business transacted at such meeting: Provided, however, that as a condition precedent to the issue of such proxy the applicant shall file with the Trustee at its said office, on or before the tenth day preceding such meeting, an affidavit executed as hereinafter in section 11 hereof prescribed, and in one of the forms referred to in said
1254 section 11, except that said affidavit shall refer to and describe a subscription receipt (or receipts) owned by said applicant, instead of certificates of interest, and that there shall be substituted in the form of said affidavit for the words "for the purpose of procuring the issue of shares of the capital stock of the Southern Pacific Company held by said Trustee, in exchange for said certificate (or certificates) of interest" the words "for the purpose of procuring the issue of a proxy to vote upon the shares of the capital stock of the Southern Pacific Company held by said Trustee represented by the subscription receipt (or receipts) above described": And provided further, that the applicant for such proxy shall at the close of business on the tenth day preceding said meeting be registered on the books of the Trustee as the owner of the subscription receipt (or receipts) upon which such application is based.

The Trustee shall not be entitled to vote or issue proxies for voting in respect of any of the said shares of defendant Southern Pacific Company except as in this section provided or as may be hereafter directed by the court.

SECTION 10. So long as any of the shares of the capital stock of the Southern Pacific Company aforesaid shall be held by the
1255 Trustee, the Trustee shall collect and receive any and all cash dividends declared by the Southern Pacific Company appertaining to the shares so held, which shall be payable to the Trustee as the registered stockholder entitled to such dividends by the terms of the declarations thereof.

Upon the conversion pursuant to section 11 hereof of any certificate of interest issued hereunder into a certificate for shares of capital stock of the Southern Pacific Company held by the Trustee, the latter shall pay in cash to the owner of the certificate of interest converted, or upon his order, the amount of all cash dividends collected by it, including the aforesaid accumulated dividends, appertaining to the number of shares represented by such certificate of interest, but without interest thereon, and shall execute and deliver to such owner, or upon his order, a dividend order or assignment for the amount of any unmatured dividends declared in respect of such shares which shall be vested at the time of such conversion in the Trustee as the registered stockholder entitled thereto. Any interest realized or allowed by the Trustee upon funds paid to it as dividends shall be applicable to the payment of the compensation of the Trustee and the expenses of the administration of the trust, and any balance thereof remaining shall be paid to the defendant
1256 Oregon Short Line Railroad Company, unless otherwise ordered by the court.

All dividends payable otherwise than in cash which shall be declared by the Southern Pacific Company shall be received and held by the Trustee for the pro rata benefit of said registered owners from time to time, of the certificates of interest issued hereunder and outstanding, upon the same terms and conditions as the shares originally deposited, and shall be distributed to the persons who shall be the respective owners of certificates of interest when and as, and only when and as, the shares originally deposited are distributed to them respectively, subject to any necessary adjustment by scrip or otherwise, in the discretion of the Trustee, in respect of fractional shares. All subscription or other rights offered to stockholders of the Southern Pacific Company shall be immediately assigned by the Trustee pro rata to said registered owners of the certificates of interest and subscription receipts issued hereunder and then outstanding, who shall be such registered owners at the date when such rights become fixed.

No deduction shall be made by the Trustee in the distribu-
1257 tion of such dividends or increase for any commissions or expenses of the Trustee or other cost of collection or payment.

SECTION 11. At any time upon demand, at its office in the city of New York, upon surrender of any outstanding certificate of interest by the registered owner thereof or his assignee, the Trustee shall deliver to him stock certificates for the number of shares of the defendant Southern Pacific Company (of the par value of $100 each) represented by the surrendered certificate of interest, which stock certificates shall be issued by the said Southern Pacific Company and registered on its books in the name of the new holder, upon condition, however, that the applicant for such conversion or exchange shall file with the Trustee a duly executed affidavit in one of the forms hereto annexed.

The affidavit in the case of an individual applying for such conversion or exchange in his own right shall be substantially in the form annexed hereto marked "Form O".

If the applicant is a corporation or joint-stock company, the affidavit shall be executed by its president, vice president, controller, secretary, or treasurer, or, in the case of a corporation of a foreign country, by one of its managing officers, and shall be substan-
2258 tially in the form annexed hereto marked "Form D".

If the applicant is a partnership, the affidavit shall be executed by one of the partners and shall be substantially in the form annexed hereto marked "Form E".

If the applicant is an executor, administrator, guardian, or testamentary or other trustee of an express trust, the affidavit shall be made by such executor, administrator, guardian, or trustee, as the case may be, or by one of such if the application is made on behalf of joint representatives, or, if such representative is a corporation or joint-stock company, by its president, vice president, controller, secretary, or treasurer, or, in the case of a corporation of a foreign country, by one of its managing officers, and shall be substantially in the form annexed hereto marked "Form F".

Provided, however, that whenever the number of shares of capital stock of the defendant Southern Pacific Company held by the Trustee hereunder shall be reduced by the conversion of certificates of interest as provided in this section to 500 shares, it shall be the duty of the Trustee thereupon to distribute such remaining shares pro rata amongst the registered owners of the then outstanding certificates of interest, or their assignees, upon the surrender of such cer-
2259 tificates of interest, without requiring the affidavits hereinabove provided for.

All certificates of interest surrendered pursuant to conversions or exchanges effected under this section shall forthwith be canceled by the Trustee and shall not be reissued.

Within thirty (30) days after the conversion of certificates of interest as herein provided shall have commenced, and at monthly

intervals thereafter, the Trustee shall file with the clerk of the court a report showing the aggregate amount of certificates of interest converted since the last previous report of the Trustee and the names of all persons, firms, or corporations to whom shares of stock of the Southern Pacific Company shall have been issued pursuant to every such conversion involving more than one hundred (100) shares; and from time to time, upon the request of the Attorney General of the United States, the Trustee shall furnish him with any information which he may require relating to the carrying out of this decree.

SECTION 12. The Trustee shall keep at an office maintained by it in the city of New York books for the registration and transfer
1260 of the certificates of interest and subscription receipts issued hereunder. Provision may be made by the Trustee for the registration and transfer of subscription receipts and certificates of interest in London, England. Upon the surrender of any such certificate of interest or subscription receipt duly assigned for transfer and the payment of any stamp tax required by law the Trustee shall issue to the transferee one or more new certificates of interest or subscription receipts for a like number of shares and shall cancel the surrendered certificate of interest or subscription receipt.

The Trustee may treat the person in whose name shall be registered any certificate of interest or subscription receipt, as hereinbefore provided, as the absolute owner thereof, and shall not be affected by any notice to the contrary; and also, in order to enable it to effectuate the true intent of this decree, the Trustee (so far as consistent with the provisions hereof) may decide all matters of detail in respect of the form of subscription receipts or certificates of interest and the arrangements necessary for their issue and transfer.

The Trustee shall be accountable for its action hereunder
1261 only in proceedings in this cause, and any order of the court entered upon notice to it and to the defendants, Union Pacific Railroad Company and Oregon Short Line Railroad Company, shall be full protection to the Trustee for any action which it may take pursuant thereto, and any action so taken by the Trustee shall be binding upon all holders of subscription receipts and certificates of interest. The Trustee shall not be liable to anyone for deferring to take any action until instructed by the court.

In case any certificate of interest or subscription receipt issued hereunder shall become mutilated or be destroyed, the Trustee, in its discretion, may issue a new certificate of interest or subscription receipt of the same denomination in exchange and substitution for and upon cancellation of such mutilated certificate of interest or subscription receipt, or in lieu of and substitution for the same

destroyed. In case of destruction the applicant for a substituted certificate of interest or subscription receipt shall furnish to the Trustee evidence of such destruction to the satisfaction of the Trustee, in its discretion, and such reasonable indemnity as the Trustee shall require.

SECTION 13. From time to time the Trustee shall pay over to
1262 the defendant Oregon Short Line Railroad Company, or to its order, upon demand, when and as received by it, the moneys received by it in payment of, or on account of, subscriptions or purchases as hereinbefore provided, and it shall not be liable for any loss of such moneys unless incurred through its gross negligence or willful misconduct.

SECTION 14. The Trustee shall be entitled to reasonable compensation, the amount thereof to be approved by the court, for all services rendered by it hereunder, which compensation, together with counsel fees and other expenses incurred hereunder and approved by the court, and all stamp and other taxes imposed by law upon the transfer of the shares of the Southern Pacific Company from the Trustee to the holders of certificates of interest, shall be paid by the defendants Union Pacific Railroad Company and Oregon Short Line Railroad Company.

SECTION 15. The defendant Southern Pacific Company is hereby authorized and directed from time to time to make any transfers upon its stock books of the aforesaid shares of its capital stock held by the defendant Oregon Short Line Railroad Company, or its nominees, and to make all payments of dividends contemplated by the provisions of this decree or necessary or appropriate in the performance thereof.

SECTION 16. Nothing in this decree nor in that entered
1263 February 12, 1913, shall be construed as prohibiting the defendant Union Pacific Railroad Company from acquiring at any time the capital stock or the railroads and other property of the defendant Central Pacific Railway Company.

SECTION 17. If at any time after January 1, 1916, any of such certificates of interest shall remain outstanding, the court in its discretion, after a hearing upon such notice to holders of certificates of interest as it may direct, may order the shares of the Southern Pacific Company represented by said certificates to be sold and the proceeds distributed to the registered owner or owners of such certificate or certificates.

SECTION 18. The Trustee is hereby authorized to treat all funds on deposit hereunder as general deposits and to allow interest thereon.

Louis C. Krauthoff, Esquire, of New York City, is appointed commissioner for the court to see to it that the letter and spirit of this

plan of dissolution is carried out and is directed to report to the court from time to time.

SECTION 19. The Trustee shall be subject to removal by the court in its discretion, and, in the event of such removal, the court shall appoint another Trustee.

1264 SECTION 20. Any party to this cause may make application to the court at any time for such further orders and directions as may be necessary or proper in relation to the carrying out of the provisions of this decree, or in relation to the disposition of the unlawfully held shares of the defendant Southern Pacific Company; and jurisdiction thereof is retained for the purpose of giving full effect to this decree and the decree herein entered on February 12, 1913, and for the purpose of making such other and further orders and decrees or taking such other action, if any, as may become necessary or appropriate to carry out and enforce said decrees and the directions of the Supreme Court.

WALTER H. SANBORN,
WILLIAM C. HOOK,
WALTER I. SMITH,
United States Circuit Judges.

JUNE 30, 1913.

1265 Form A.

No. ———. ——— shares.

Certificate of interets in Southern Pacific Company stock.

This is to certify that the undersigned (hereinafter designated as the "Trustee") has received and now holds for ——— or assigns certificates representing ——— shares of the capital stock of the Southern Pacific Company, a corporation of the State of Kentucky, of the par value of $100 each, subject to the terms of a decree entered the ——— day of June, 1913, by the District Court of the United States for the District of Utah, in the suit of the United States of America against Union Pacific Railroad Company and others, to which decree reference is hereby made for a statement of the terms and conditions upon which this certificate is issued and of the rights of the holder hereof, and to which decree the holder of this certificate assents by acceptance hereof.

This certificate is one of a series of certificates issued by the undersigned in accordance with the terms of the said decree, repre-
1266 senting in the aggregate not exceeding ——— shares of the capital stock of said Southern Pacific Company.

The registered owner hereof, or his assigns, is entitled, upon the surrender of this certificate and upon filing with the Trustee an affidavit in the form required by section 11 of said decree (to the effect, in substance, that the applicant does not own any shares of the capital stock of the Union Pacific Railroad Company and is not acting for or on behalf of any stockholder of the Union Pacific Railroad Company, or in concert, agreement, or understanding with any other person, firm, or corporation for the control of the Southern Pacific Company in the interest of the Union Pacific Railroad Company, but in his own behalf in good faith), to receive a stock certificate for the number of shares of the capital stock of said Southern Pacific Company represented by this certificate and to receive the amount of all dividends (but without interest thereon) appertaining to the number of shares represented by this certificate declared and payable by the Southern Pacific Company after the 2d day of January, 1913, and collected and received by the Trustee prior to such conversion, and also to receive a dividend order or assignment
1267 executed by the Trustee for any declared but unmatured dividend appertaining to said shares which shall be vested at the time of such conversion in the Trustee as the registered holder of said shares. All subscription or other rights offered by the Southern Pacific Company appertaining to the shares represented by this certificate will be assigned to the registered owner hereof, as provided in said decree.

This certificate is transferable by the registered owner hereof, in person or by his duly authorized attorney, at the office of the Trustee in the city of New York, upon surrender and cancellation hereof; and thereupon one or more new certificates for a like number of shares will be issued to the transferee in exchange therefor.

This certificate is not valid until countersigned by the registrar.

In witness whereof, , as Trustee, has caused this certificate to be executed by one of its vice presidents and its corporate seal to be hereunto affixed and to be attested by one of its assistant secretaries this day of , 191 .

----------,
Trustee.

1268 By ----------,
Vice President.

Attest:

----------,
Assistant Secretary.

Countersigned:

----------,

By ----------.

Form of assignment.

For value received the undersigned hereby sells, assigns, and transfers unto the interest in Southern Pacific Company shares and dividends thereon represented by the within certificate and does hereby irrevocably constitute and appoint attorney to transfer the same on the books of the Trustee, with full power of substitution in the premises.

Dated ----------

In the presence of—

1269 Form B.

No. ——— ——— shares

Subscription receipt for certificate of interest in Southern Pacific Company stock.

This is to certify that the undersigned (hereinafter designated as the "Trustee" has received payment of the first installment of twenty-five dollars ($25) per share of the subscription price ($ per share) of certificates of interest in shares of the capital stock of the Southern Pacific Company, of the par value of $100 per share, and that , or assigns, will be entitled to receive a fully paid certificate of interest for said shares, at the office of the undersigned in the city of New York, upon the surrender of this receipt and the payment of the balance of said subscription price, on or prior to the day of , 1914, with interest thereon at the rate of 6 per cent per annum to the date of payment.

For failure to pay the said deferred balance of the subscription price, with the interest thereon, on the day of , 1914, will operate as a forfeiture of all rights in respect of the
1270 subscription and the installment previously paid.

The undersigned has received and will hold, until default in the payment of the principal or interest of the deferred balance of the said subscription price, for the above-named subscriber, or assigns, stock certificates representing the number of shares above specified of the capital stock of the Southern Pacific Company, subject to the terms of a decree entered the day of June, 1913, by the District Court of the United States for the District of Utah, in the suit of the United States of America against Union Pacific Railroad Company and others, to which decree reference is hereby made for a statement of the terms and conditions upon which this subscription receipt is issued and of the rights of the holder

hereof, and to which decree the holder hereof assents by acceptance hereof.

All dividends, appertaining to the number of shares above specified, declared and payable by the Southern Pacific Company after the second day of January, 1913, will be collected by the Trustee, and paid over (but without interest thereon) to the holder of a fully paid certificate of interest for said shares, upon the conversion of such certificate of interest into said shares of the capital stock of
1271 the Southern Pacific Company pursuant to the provisions of said decree.

This subscription receipt is transferable by the registered owner hereof, in person or by his duly authorized attorney, at the office of the Trustee in the city of New York or at its office or agency in London, England, upon surrender and cancellation hereof; and thereupon one or more new subscription receipts for a like number of shares will be issued to the transferee in exchange herefor.

The registered owner hereof is entitled, at any time not less than 10 days prior to the annual stockholders' meeting of the Southern Pacific Company held on the Wednesday following the first Monday of April in each year, and not less than 10 days prior to any special stockholders' meeting of said company, to require the Trustee to execute and deliver to such registered owner or his nominee a proxy appointing such attorneys, agents, and proxies as the registered owner hereof shall nominate in writing to appear and vote at such stockholders' meeting upon the number of shares represented by this subscription receipt for the election of directors and upon any other business transacted at such meeting: *Provided, however*, That
1272 such registered owner shall file with the Trustee, at its office in the city of New York, on or before the tenth day preceding such meeting, an affidavit in the form required by sections 9 and 11 of said decree (to the effect, in substance, that the registered owner hereof does not own any shares of the capital stock of the Union Pacific Railroad Company and is not acting for or on behalf of any stockholder of the Union Pacific Railroad Company, or in concert, agreement, or understanding with any other person, firm, or corporation for the control of the Southern Pacific Company in the interest of the Union Pacific Railroad Company, but in his own behalf in good faith); and provided, further, that the applicant for such proxy shall at the close of business on the tenth day preceding said meeting be registered on the books of the Trustee as the owner of this subscription receipt.

This subscription receipt shall not be valid for any purpose unless signed on behalf of the Trustee by one of its officers or by its agents in London.

In witness whereof , as Trustee, has caused this certificate of interest to be executed in its behalf this day of , 1913.

1273 ----------,
Trustee.

By ----------

Form of assignment.

For value received, the undersigned hereby sells, assigns, and transfers unto this subscription receipt and the interest represented thereby in shares of the capital stock of Southern Pacific Company, and dividends thereon, and does hereby irrevocably constitute and appoint attorney to transfer the same on the books of the Trustee, with full power of substitution in the premises.

Dated----------

In the presence of—

1274 Form C.

State of ----------, County of ----------:

, being duly sworn, deposes and says:

That deponent is the bona fide owner in his own proper right of a certificate or certificates of interest, numbered , for shares, registered in the name of , issued by the Central Trust Company of New York, as Trustee, under a decree entered on the day of June, 1913, by the District Court of the United States for the District of Utah, in the suit of the United States of America against Union Pacific Railroad Company and others, and makes this affidavit for the purpose of procuring the issue of shares of the capital stock of the Southern Pacific Company held by said Trustee in exchange for said certificate (or certificates) of interest. That deponent does not own in his (or her) own right any shares of the capital stock of the Union Pacific Railroad Company, a corporation of the State of Utah, whether registered in his (or her) own name on the books of said Union Pacific Railroad Company or registered in the names of others for deponent's use and benefit. That deponent, in making this application,

1275 is not acting for or on behalf of any stockholder of the Union Pacific Railroad Company or in concert, agreement, or understanding with any other person, firm, or corporation for the

control of the Southern Pacific Company in the interest of the Union Pacific Railroad Company, but in his own behalf in good faith.

Sworn to before me this day of , 191 .

Form D.

State of ----------, County of ----------, ss:

, being duly sworn, deposes and says:

That he is of the , a corporation (or a joint stock company), hereinafter called the "Applicant." That said applicant is the bona fide owner in its own proper right of a certificate or certificates of interest, numbered , for shares, registered in the name of , issued by the Central Trust Company of New York, as Trustee, under a decree entered on the day of June, 1913, by the District Court of the United States for the District of Utah, in the suit of the United States of America against Union Pacific Railroad Com-
1276 pany and others, and that deponent makes this affidavit for the purpose of procuring the issue of shares of the capital stock of the Southern Pacific Company held by said Trustee in exchange for said certificate (or certificates) of interest. That said applicant does not own in its own right any shares of the capital stock of the Union Pacific Railroad Company, a corporation of the State of Utah, whether registered in its own name on the books of said Union Pacific Railroad Company or registered in the names of others for said applicant's use and benefit. That said applicant in making this application is not acting for or on behalf of any stockholder of the Union Pacific Railroad Company or in concert, agreement, or understanding with any other person, firm, or corporation for the control of the Southern Pacific Company in the interest of the Union Pacific Railroad Company, but in its own behalf in good faith.

Sworn to before me this day of , 191 .

1277 Form E.

State of----------, County of----------, ss:

, being duly sworn, deposes and says:

That he is a member of the partnership of , hereinafter called the "Applicants"; that said applicants are the bona fide owners in their own proper right of a certificate or certificates of interest numbered for shares, registered in the name of , issued by the Central Trust Company of New York, as Trustee, under a decree entered on the day of June, 1913, by the District Court of the United States for the District of Utah, in the suit of the United States of America

against Union Pacific Railroad Company and others, and deponent makes this affidavit for the purpose of procuring the issue of shares of the capital stock of the Southern Pacific Company held by said Trustee in exchange for said certificate (or certificates) of interest. That said applicants do not own in their own right any shares of the capital stock of the Union Pacific Railroad Company, a corporation of the State of Utah, whether registered in the applicants' own name on the books of said Union Pacific Railroad Com-
1278 pany or registered in the names of others for their use and benefit. That said applicants, in making this application, are not acting for or on behalf of any stockholder of the Union Pacific Railroad Company, or in concert, agreement, or understanding with any other person, firm, or corporation for the control of the Southern Pacific Company in the interest of the Union Pacific Railroad Company, but in their own behalf in good faith.

Sworn to before me this day of , 191 .

Form F.

State of_____, County of_____, ss:

, being duly sworn, deposes and says:

That he is of . That the trust estate represented by deponent is the bona fide owner in its own proper right of a certificate or certificates of interest numbered for shares, registered in the name of , issued by the Central Trust Company of New York, as Trustee, under a decree entered on the day of June, 1913, by the District Court of the United States for the district of Utah, in the
1279 suit of the United States against Union Pacific Railroad Company and others. That deponent makes this affidavit for the purpose of procuring the issue of shares of the capital stock of the Southern Pacific Company held by said Trustee, in exchange for said certificate (or certificates) of interest. That said trust estate does not own any shares of the capital stock of the Union Pacific Railroad Company, a corporation of the State of Utah, whether registered in the name of said trust estate on the books of said Union Pacific Railroad Company or registered in the names of others for the use and benefit of said trust estate. That said trust estate, in making this application, is not acting for or on behalf of any stockholder of the Union Pacific Railroad Company, or in concert, agreement, or understanding with any other person, firm, or corporation for the control of the Southern Pacific Company in the interest of the Union Pacific Railroad Company, but in its own behalf in good faith.

Sworn to before me this day of , 191

1280 DEFENDANTS' EXHIBIT NO. 50 (PART G), APRIL 16, 1915.

Appellant's brief of facts and appellant's brief of the law filed in the United States Supreme Court on behalf of the United States of America by George W. Wickersham, Attorney General, Frank B. Kellogg and C. A. Severance, special assistants to the Attorney General in "The United States of America vs. The Union Pacific Railroad Company et al."

Pursuant to stipulation at page 1929 of the testimony the briefs offered in evidence need not be copied among the exhibits in this case.

1281 DEFENDANTS' EXHIBIT (NEILL) NO. 51, APRIL 16, 1915.

PACIFIC MAIL STEAMSHIP COMPANY,
Board of Directors, May 7, 1914.

The chairman submitted draft of letter over his signature as president, dated New York, May 7, 1914, and addressed to the stockholders of this company, explanatory of the steps proposed to be taken in connection with handling the company's business after July 1, 1914, as outlined in the foregoing resolution; and he stated he proposed, with the approval of this board, to forward a copy of this letter to each stockholder of the company;

Whereupon, on motion duly seconded, it was

Resolved, That the proposed action of the chairman to forward a copy of such letter to each stockholder of the company, and the form of such letter submitted as above are hereby approved.

I, Hugh Neill, secretary of the Pacific Mail Steamship Company, do hereby certify that the above and foregoing is a true copy
1282 of a preamble and resolution duly adopted by the board of directors of the Pacific Mail Steamship Company at a special meeting of said board held at the principal office of the company in the city and State of New York on the 7th day of May, 1914, at which a quorum was present; and that the said preamble and resolution are now in full force and effect. And I do further certify that annexed hereto, marked "Exhibit A", is a true copy of that certain letter, dated New York, N. Y., May 7, 1914, signed J. Kruttschnitt, president, and addressed to the stockholders of this company, in the foregoing resolution referred to; that annexed hereto, marked "Exhibit B", is a true copy of the notice of annual meeting of stockholders of Pacific Mail Steamship Company held May 27, 1914; that annexed hereto, marked "Exhibit C", is a true copy of the printed form of proxy used at the annual meeting of stockholders of this company held May 27, 1914; and that I caused a copy of each of the above-described documents, hereinabove referred to as "Exhibits A,

B, and C", respectively, to be mailed in a sealed wrapper, by United States mail, postage prepaid, addressed to each stockholder of record of this company, at his address as the same appeared on the books of the corporation.

In witness whereof I have hereunto subscribed by name
1283 and affixed the seal of said company this 5th day of April, 1915.

[SEAL.] HUGH NEILL,
Secretary.

"EXHIBIT A."

PACIFIC MAIL STEAMSHIP COMPANY,
EXECUTIVE OFFICES, 165 BROADWAY,
New York, N. Y., May 7, 1914.

To the stockholders of the Pacific Mail Steamship Company:

The opening of the Panama Canal in the near future will practically put an end to that part of the business in which this company is now engaged, which consists of through traffic between San Francisco and Atlantic coast and Gulf ports of the United States and European ports, which traffic is now carried by the company's steamers between San Francisco and Balboa in connection with the Panama Railroad between Balboa and Colon and Atlantic Ocean steamship lines. Upon the opening of the canal such traffic will move in one bottom and without transhipment from port of origin to port of
destination. By reason of the expense of transhipment, as
1284 well as the breakage of cargo through rehandling and the incidental loss, it will be impossible for this company to retain any of such competitive business.

Entirely apart from the prohibitions of the act of Congress, known as the Panama Canal act, it would be impracticable and unprofitable for this company to try to compete for this business by sending through the canal the small combination freight and passenger steamers it now operates in the Panama service, since they would be in competition with the high-capacity vessels of the American-Hawaiian Steamship Company, of the Grace Line, and of the Luckenbach Line, all of the most modern design, with efficient cargo handling facilities, and all operated with small and economical crews possible where freight alone is carried and passengers are excluded. Moreover, the company possesses the requisite number only of steamers with limited capacity to accommodate the coastwise business between San Francisco and west coast ports. It has not a sufficient number of these small steamers to maintain service between Balboa and Atlantic coast ports, and possible relief by transfer of its large modern ships is out of the question because it owns a number barely sufficient to equip its trans-Pacific lines.

Mr. Schwerin, the general manager of this company, in reporting the above facts, has recommended that the company cease engaging in the business between the San Francisco and Atlantic ports via the Isthmus of Panama, above refered to, and confine the operation of its steamships (heretofore in Panama service) to handling freight and passenger traffic between San Francisco and ports in Mexico and Central America, and, by transhipment at Balboa, to South American ports, and *vice versa;* between said Mexican and Central American ports and Europe and Atlantic coast and Gulf ports said traffic with Europe and Atlantic and Gulf ports to be handled to or from Balboa and transhipped to vessels operating through the canal; and from San Francisco, Mexican, and Central American ports to ports of the West Indies and the northeast coast of South America, and *vice versa.*

The directors approve of these recommendations, but desire that the matter be passed upon by the stockholders at their approaching annual meeting. Accordingly, the board, at its meeting to-day, May 7, 1914, passed resolutions submitting the question to the stockholders. A copy of these resolutions is attached.

It is believed that the foregoing statement, in connection with the recitals of the resolutions, will fully explain the situation.

Yours, truly,

J. KRUTTSCHNITT, *President.*

"EXHIBIT B."

Pacific Mail Steamship Company. Notice of meeting.

165 BROADWAY, *New York, N. Y.*

The annual meeting of stockholders of the Pacific Mail Steamship Company will be held at the office of the company at No. 165 Broadway, New York, N. Y., on Wednesday, the 27th day of May, 1914, at 11.45 o'clock a. m., for the election of directors and the transaction of such other business as may legally come before the meeting.

The books for the transfer of stock will be closed at 12 o'clock m., Saturday, May 23, 1914, and will be reopened at 10 o'clock a. m., Thursday, May 28, 1914.

HUGH NEILL, *Secretary.*

Dated May 7, 1914.

N. B. If you do not expect to be present at the meeting, please execute the enclosed proxy and promptly return it in the accompanying envelope.

HUGH NEILL, *Secretary.*

"EXHIBIT C."

Proxy—Pacific Mail Steamship Company. Annual meeting M
27, 1914.

Shares ___

Know all men by these presents:

That _____, the undersigned, hereby constitute and appoint
Kruttschnitt, G. M. Buck, and R. P. Schwerin, or any of them,
such person or persons as they or a majority of them may substitu
and appoint, attorneys and proxies for and in the name, place, a
stead of the undersigned, to vote upon all stock of the Pacific M
Steamship Company held or owned by the undersigned, accordi
to the number of votes that the undersigned would be entitled to v
if then personally present at the annual meeting of the stockhold
of the Pacific Mail Steamship Company, to be held at the office
said company, No. 165 Broadway, New York, N. Y., on We
1288 nesday, the 27th day of May, 1914, at 11.45 o'clock a. m., a
at all adjournments thereof, for the election of directors a
the transaction of all such other business as may legally co
before the meeting, including the approval and ratification of
action of the board of directors and of the executive committee sin
the last annual meeting of the stockholders of the company, here
ratifying and confirming all that any of the said attorneys or the
substitutes may lawfully do at said meeting in the name, place, a
stead of the undersigned.

Authority is hereby given to any of said attorneys and proxies
their substitutes, to act in the absence of the others, with all t
powers which the undersigned would possess if personally present
such meeting. All proxies heretofore made or given by the unde
signed are hereby revoked.

In witness whereof the undersigned ha__ hereunto set ____ hand
and seal__ this _____ day of May, 1914.

Signed, sealed, and delivered in the presence of—

_____.

_____ [L. S.]

1289 Please date and sign this proxy in the presence of a witn
and return it promptly in the enclosed envelope to Hugh N
secretary, 165 Broadway, New York City.

Pacific Mail Steamship Company stockholders' meeting.

NEW YORK, *May 27, 1914.*

The sixty-seventh annual meeting of stockholders of the Pac
Mail Steamship Company was held at the office of the company,

Broadway, New York City, on Wednesday, May 27, 1914, at 11.45 o'clock a. m., pursuant to notice made and given in conformity with law and the by-laws of the company.

On motion duly made and seconded, Mr. Gordon M. Buck was nominated as chairman of the meeting and, having received a unanimous vote, was declared duly elected, and thereupon took the chair.

On motion duly seconded Mr. Hugh Neill was appointed secretary of the meeting.

The secretary submitted proofs of publication of the notice of the annual meeting, showing that the said notice had been published for the time and in the manner prescribed by the by-laws of the company.

1290 Oath of inspectors.—The oath of office of the inspectors of the meeting was then read by the secretary and ordered on file.

List of stockholders.—The secretary also submitted a certified alphabetical list of stockholders of the company registered as such at the close of business on May 23, 1914, and, upon call of said list, it was found that there were present at the meeting, in person or by proxy, stockholders owning shares as follows:

1. By proxies in favor of J. Kruttschnitt, G. M. Buck, and R. P. Schwerin, represented by G. M. Buck	135,235 shares.
2. By proxy in favor of Claude A. Simpler	1,100 shares.
3. Owen F. Roberts, in person	5,200 shares.
4. Martin A. Springsteed, in person	40 shares.
Total	141,575 shares.

Of the aggregate par value of $14,157,500 and more than one-half of the capital stock of the company.

Approval of minutes of board of directors.—The minutes of all the meetings of the board of directors since May 28, 1913, were
1291 read, and, on motion, duly seconded, it was, by a majority vote,

Resolved, That all action of the board of directors and officers of the company since the 28th day of May, 1913, as set forth or mentioned in the record of the minutes of meetings of the board of directors of the company, is hereby ratified, approved, and confirmed.

Mr. Simpler, representing 1,100 shares, and Mr. Springsteed, owning 40 shares of stock, desired to be recorded as voting against approval of the resolution adopted by the board of directors at its meeting held May 7, 1914, relating to change in the conduct of the company's business proposed to be made July 1, 1914.

Approval of minutes of executive committee.—The minutes of the meetings of the executive committee, held since May 28, 1913, were submitted, and, on motion, duly seconded, it was unanimously

Resolved, That all action of the executive committee and officers of the company since the 28th day of May, 1913, as set forth or men-

tioned in the record of the minutes of the executive committee
this company, is hereby ratified, approved, and confirmed.
1292 Opening of the polls.—At 12 o'clock, noon, the chairm
declared the polls open for the purpose of receiving the vot
of the stockholders for the election of directors for the ensuing ye

At this point Mrs. Lizzie L. Poirier, a holder of 15 shares of stoc
and Mr. George Reuter, a holder of 150 shares of stock came into th
meeting.

The following resolution was offered by Mr. Owen F. Roberts:

Resolved, That the by-laws be amended so as to postpone the d
fixed for the annual meeting of the stockholders, in order that in th
future the annual report of the company may be prepared in time f
the annual meeting of stockholders and be submitted at such ann
meeting; and that the general manager of the company be pres
at the annual meeting.

Having failed to receive a second, this motion was not put to
vote.

The preambles and resolutions adopted at a special meeting of th
board of directors of this company, held at its office, 165 Broadw
New York, on May 7th, 1914, were submitted to the meeting and re
aloud by the secretary.

On motion, duly made and seconded, the following pr
1293 ambles and resolution were by majority vote adopted:

Whereas, the Pacific Mail Steamship Company is now ope
ating steamers which are engaged in freight and passenger traffic
follows:

(1) Between San Francisco and Hawaiian Islands, Philippi
Islands, China, and Japan.

(2) Between San Francisco and ports on the west coast of Mexi
and Central America, and also west coast of South America by inte
change with other vessels at Balboa.

(3) Between west coast ports of Mexico and Central America an
New York, New Orleans, and European ports, by through route co
sisting of its own steamers between San Francisco and Balboa, th
Panama Railroad and Atlantic Ocean steamship service.

(4) Between San Francisco, west coast ports of Mexico and Ce
tral America and ports of the West India Islands and the northe
coast of South America, by a through route consisting of its ow
steamers on the Pacific Coast, the Panama Railroad and Atlan
Ocean steamship service.

(5) Between San Francisco and New York, New Orleans, an
European ports by through route consisting of its own steame
between San Francisco and Balboa, the Panama Railroad an
1294 Atlantic Ocean steamship service.

Whereas Mr. R. P. Schwerin, the vice president and general manger of this company, has reported to the board of directors that respective of the prohibitions of the Panama Canal act it will t be practicable or feasible for this company, after the opening f the Panama Canal, to continue in the class of traffic embraced section (5) above, because with a transhipment at Balboa it n not secure such traffic in competition with ships operating rough the Panama Canal between San Francisco and Atlantic d European ports, and because the ships of this company now emoyed in such trade are unsuitable and inadequate for service rough the canal; and has recommended that the company conue to engage in all of the traffic above specified except that emaced in section (5).

Whereas the board of directors by preambles and resolution, dopted at a special meeting held May the 7th, 1914, and submitted this meeting, has referred to the stockholders the aforesaid recomendations of Mr. Schwerin;

Resolved, That the above referred to recommendations of Mr. Schwerin be approved, and the board of directors be and they 95 are hereby authorized to withdraw from the traffic described in clause (5) of the above preambles and to continue in the affic embraced in sections (1), (2), (3), and (4), or so much ereof in which in the judgment of the board this company should ntinue to engage, such change to be made on or before July the t, 1914, or at such other time or times as the board of directors ay determine.

Mr. Simpler, representing 1,100 shares, Mr. Springsteed, repreenting 40 shares, and Mr. Owen F. Roberts, representing 5,200 ares of stock, desired to be recorded as voting against the adoption the foregoing resolution. Mr. George Reuter desired to be reorded as not voting. All other shares represented at the meeting ere voted in favor of the resolution.

Closing of the polls.—At 2 o'clock p. m. the shareholders having d full opportunity to cast their ballots, the chairman declared e polls closed. Mr. George Reuter, representing 150 shares of ock, requested to be recorded as not voting in the election for rectors.

Thereupon the inspectors submitted their report as follows:

96 "Pacific Mail Steamship Company. Certificate of inspectors of election of directors.

We, the undersigned, duly elected inspectors of election to serve the anual meeting of stockholders of the Pacific Mail Steamship ompany, a stock corporation of the State of New York, held on the th day of May, 1914, do hereby certify as follows:

That a meeting of the stockholders of said corporation was he
at 11.45 o'clock a. m. on the 27th day of May, 1914, at the office
the corporation, at 165 Broadway, New York City, pursuant to
notice.

That before entering upon the discharge of our duties we w
severally sworn, and the oath so taken by us is hereto annexed.

That the result of the votes taken at such meeting for the elec
of directors of said corporation for the ensuing year was as follo

		Shares
	Henry W. de Forest	135,2
	Robert Goelet	135,2
	J. Kruttschnitt	135,2
1297	George H. Macy	135,2
	Ogden Mills	135,2
	E. P. Swenson	135,2
	R. P. Schwerin	135,2
	L. J. Spence	135,2
	W. A. Worthington	135,2
	Owen F. Roberts	6,2

That Henry W. de Forest, Robert Goelet, J. Kruttschnitt, Geo
H. Macy, Ogden Mills, E. P. Swenson, R. P. Schwerin, L. J. Spe
and W. A. Worthington, each having received 135,235 of the vo
cast at said election, were declared by us duly elected directors
said corporation for the ensuing year.

In witness whereof we have made and signed this certificate t
27th day of May, 1914.

W. F. BULL.
GEO. M. THORNTON.
H. B. HENRY.

STATE OF NEW YORK,
County of New York, ss:

On the 27th day of May, 1914, before me personally c
W. F. Bull, Geo. M. Thornton, and H. B. Henry, to me kno
1298 and known to me to be the individuals described in and w
executed the foregoing certificates, and severally acknowled
to me that they executed the same.

[SEAL.] WM. E. LA PLANTE,
Notary Public, New York County No. 2227,
New York Register No. 616

Term expires March 30, 1916.

STATE OF NEW YORK,
County of New York, ss:

We, the undersigned, W. F. Bull, Geo. M. Thornton, and H.
Henry, duly appointed inspectors of election to serve at the a

eting of stockholders of the Pacific Mail Steamship Company to held at the office of said company, at No. 165 Broadway, in the y of New York, N. Y., on this 27th day of May, nineteen hundred d fourteen, being severally duly sworn, do depose and say, and each r himself deposes and says, that he will faithfully execute the ties of inspectors at such meeting with strict impartiality and to e best of his ability.

W. F. BULL.
GEO. M. THORNTON.
H. B. HENRY.

99 Sworn to and subscribed before me this 27th day of May, 1914.

[SEAL.] WM. E. LA PLANTE,
Notary Public, New York County, No. 2227.
New York Register No. 6164.

Term expires March 30, 1916."

On motion, duly seconded, the report of the inspectors of election as accepted and ordered placed on file, and the chairman declared at Messrs. Henry W. de Forest, Robert Goelet, J. Kruttschnitt, eorge H. Macy, Ogden Mills, E. P. Swenson, R. P. Schwerin, L. J. pence, and W. A. Worthington, mentioned therein, were duly ected directors of the company for the ensuing year.

On motion, adjourned.

HUGH NEILL, *Secretary.*

00 I, Hugh Neill, secretary of the Pacific Mail Steamship Company, do hereby certify that the above and foregoing is a true opy of the minutes of the annual meeting of its stockholders held on e 27th day of May, 1914; and that annexed hereto is a copy of that rtain resolution adopted at a special meeting of the board of direcrs of the Pacific Mail Steamship Company held May 7th, 1914, to hich reference is made in the preamble and resolution appearing on age 4 of the foregoing minutes of the annual meeting of stockholders ove referred to. And I do further certify that at the above-menoned annual meeting of stockholders, held on the 27th day of May, 914, the Southern Pacific Company was present by proxy covering 0,755 shares of this company, owned by said Southern Pacific Comany, and that such shares were duly voted by proxy and participated said annual meeting.

In witness whereof I have hereunto subscribed my name and affixed e seal of said company this 5th day of April, 1915.

[SEAL.] HUGH NEILL, *Secretary.*

1301 Pacific Mail Steamship Company. Resolution adopted by board of directors May 7, 1914.

Whereas the Pacific Mail Steamship Company is now operating steamers which are engaged in freight and passenger traffic as follows:

(1) Between San Francisco and Hawaiian Islands, Philippine Islands, China, and Japan.

(2) Between San Francisco and ports on the west coast of Mexico and Central America, and also west coast of South America by interchange with other vessels at Balboa.

(3) Between west coast ports of Mexico and Central America and New York, New Orleans, and European ports, by through route consisting of its own steamers between San Francisco and Balboa, the Panama Railroad, and Atlantic Ocean steamship service.

(4) Between San Francisco, west coast ports of Mexican and Central America, and ports of the West India Islands and the northeast coast of South America, by a through route consisting of its own steamers on the Pacific coast, the Panama Railroad, and Atlantic Ocean steamship service.

1302 (5) Between San Francisco and New York, New Orleans and European ports, by through route consisting of its own steamers between San Francisco and Balboa, the Panama Railroad and Atlantic Ocean steamship service.

Whereas Mr. R. P. Schwerin, the vice president and general manager of the company, has reported to this board that, irrespective of the prohibitions of the Panama Canal act, it will not be practicable or feasible for this company, after the opening of the Panama Canal to continue in the class of traffic embraced in section (5) above, because with a transhipment at Balboa it can not secure such traffic in competition with ships operating through the Panama Canal between San Francisco and Atlantic and European ports, and because the ships of this company now employed in such trade are unsuitable and inadequate for service through the canal.

Whereas Mr. Schwerin has recommended that the company continue to engage in all of the traffic above specified except that embraced in section (5).

Whereas this board approves Mr. Schwerin's recommendations but believes that the suggested change in the business of the company should be approved or authorized by the stockholders.

1303 *Resolved*, That this board refer to the stockholders at the next meeting the matter of withdrawing from the traffic described in section (5) above, and continuing in the traffic embraced in sections (1), (2), (3), and (4), or so much thereof in which, in the judgment of the board, it should continue to engage, and that such

change shall be made on or before July 1, 1914, or at such other time as the board of directors may determine.

I hereby certify that the above and foregoing is a true copy of preambles and resolution unanimously adopted at a special meeting of the board of directors of the Pacific Mail Steamship Company, duly convened and held at the office of said Pacific Mail Steamship Company, 165 Broadway, New York, N. Y., on the 7th day of May, 1914, at 11.30 o'clock a. m., eastern time.

In witness whereof I have hereunto signed my name and affixed the seal of said company this 7th day of May, 1914.

[SEAL.] HUGH NEILL, *Secretary.*

1304 DEFENDANTS' EXHIBIT NO. 52, APRIL 16, 1915.

Interstate Commerce Commission, Washington.

I, George B. McGinty, secretary of the Interstate Commerce Commission, do hereby certify that the attached is true copy of application of Southern Pacific Company, under the provisions of section 5 of the act to regulate commerce as amended by section 11 of "An act to provide for the opening, maintenance, protection, and operation of the Panama Canal and the sanitation and government of the Canal Zone," approved August 24, 1912, in connection with the operation of the Pacific Mail Steamship Company, filed February 18, 1914, under docket No. 6605, the original of which is now on file and of record in the office of this Commission.

In testimony whereof I have hereunto subscribed by name and affixed the seal of the commission this 5th day of April, 1915.

GEORGE B. MCGINTY,
Secretary of the Interstate Commerce Commission.

[Seal, Interstate Commerce Commission, 1887.]

1305 Before the Interstate Commerce Commission.

Application of Southern Pacific Company under the provisions of section 5 of the act to regulate commerce as amended by section 11 of "An act to provide for the opening, maintenance, protection, and operation of the Panama Canal and the sanitation and government of the Canal Zone," approved August 24, 1912, in connection with the operation of the Pacific Mail Steamship Company.

Comes now Southern Pacific Company, hereinafter called the petitioner, and respectfully shows:

1. The petitioner is a corporation duly organized and existing under the laws of the State of Kentucky. The petitioner owns, controls, and operates either directly, as lessee, or through stock owner-

ship, lines of railroad within the States of California, Oregon, Uta
Nevada, Arizona, and New Mexico, extending from Portland in th
State of Oregon, to Sacramento, in the State of California, fro
Ogden, in the State of Utah, through Sacramento to San Francis
in the State of California, and from San Francisco, in the State
California, to a point in the State of New Mexico on the R
1306 Grande River near El Paso, in the State of Texas, wi
branches thereof reaching numerous points in said Stat
Said lines of railroad hereinbefore described connect at or near
Paso with the line of railroad of The Galveston, Harrisburg & S
Antonio Railway Company, which owns and operates a line of ra
road extending from said point to Galveston and Houston, in t
State of Texas. At said city of Houston, in the State of Texas, t
railroad of The Galveston, Harrisburg & San Antonio Railway Co
pany connects with a line of railroad owned and operated by t
Texas & New Orleans Railroad Company, which owns and operat
a line of railroad extending from said city of Houston to the Sabi
River, at which point said last-named line of railroad connects wi
a line of railroad owned and operated by the Louisiana West
Railroad Company extending from the Sabine River to Lafayet
in the State of Louisiana, at which point the line of railroad of t
last named company connects with a line of railroad owned a
operated by the Morgan's Louisiana & Texas Railroad & Steamsh
Company, extending from Lafayette, in the State of Louisiana,
New Orleans, in the State of Louisiana. Each of said lines of ra
road has numerous branches extending to numerous points wit
the States of Louisiana and Texas.

1307 Substantially all of the capital stock of each of the railro
companies hereinbefore described as owning and operati
lines of railroad east of El Paso in the State of Texas is owned by
in the interest of the petitioner. The petitioner is also the owner
substantially all of the capital stock of the Houston East & We
Texas Railway Company, the Houston & Shreveport Railroad Co
pany, and the Houston & Texas Central Railroad Company, wh
through connections with each other or with one or more of the li
of railroad hereinbefore described form continuous lines for t
transportation of persons and property to numerous points wit
the States of Texas and Louisiana. All of the lines of railroad he
inbefore described are engaged in the interstate transportation
persons and property and constitute a single system of railroads co
monly known as the Southern Pacific System.

The petitioner is also the owner of all of the outstanding capi
stock of the Southern Pacific Railroad Company of Mexico, a corp
ration organized and existing under the laws of the State of N
Jersey, which owns and operates a line of railroad extending fr

at or near Nogales, in the State of Arizona, at which point it connects with the railroad of the petitioner to various points in the Republic of Mexico.

1308 2. The petitioner also owns 110,800 shares of the par value of $11,080,000 out of a total of 200,000 shares of the par value of $20,000,000 of the capital stock of the Pacific Mail Steamship Company, a corporation organized and existing under the laws of the State of New York, hereinafter called the Steamship Company. The Steamship Company owns and operates steamships plying between San Francisco, in the State of California, Hawaii, and the Orient, and between San Francisco and Balboa on the western coast of the Isthmus of Panama and intermediate ports in the Republic of Mexico and in Central America. The vessels engaged in the latter service are not suitable for transoceanic service.

3. Traffic between Atlantic and Pacific ports of the United States and between Pacific ports of the United States and Europe in which the Steamship Company engages is now handled across the Isthmus of Panama by rail, and thence by water carriers in which neither the petitioner nor the Steamship Company has any direct or indirect interest. Upon the opening of the Panama Canal it will be impracticable and infeasible to continue the present service described in this paragraph 3 of this petition, or to handle traffic between the Pacific ports of the United States and the Atlantic or 1309 Gulf coast or Europe by shipment to or from Balboa, there to be transhipped to or from other vessels in competition with through service. As a result of the opening of the Canal the Steamship Company will be unable to engage in traffic between said ports.

4. From and after July 1, 1914, the steamship company will engage (in addition to its Hawaiian-Asiatic traffic hereinbefore described) in traffic between San Francisco and the ports of San Blas, Manzanillo, Acapulco, and Salina Cruz, in the Republic of Mexico; Ocos, Champerico, and San Jose de Guatemala, in the Republic of Guatemala; Acajutla, La Libertad, and La Union, in the Republic of Salvador; Amapala, in the Republic of Honduras; Corinto and San Juan del Sur, in the Republic of Nicaragua, and Punta Arenas, in the Republic of Costa Rica, between said ports above named, between said Mexican and Central American ports and Europe, and between said Mexican and Central American ports and Atlantic and Gulf ports of the United States, which said traffic with Europe and with the Atlantic and Gulf ports will be handled by the steamship company to or from Balboa and transhipped in connection with the vessels of other lines in no way connected with the petitioner.

1310 It will also engage in traffic between the port of Mazatlan, Mexico, and other Mexican and Central American ports above

named and between Mazatlan and Atlantic and Gulf ports of the United States.

The location of the ports named herein is shown by the map attached hereto and made a part hereof marked "Exhibit A."

None of the Mexican and Central American ports above named, except Mazatlan, a point on the Southern Pacific Railroad of Mexico, are reached by any railroad company owned, leased, operated, or controlled by the petitioner or in which the petitioner has any interest whatsoever by stock ownership or otherwise, either directly or indirectly, through any holding company or by stockholders or directors in common or in any other manner. The steamhip company and the petitioner do not and could not compete in any manner whatsoever for any of the traffic described in this paragraph; and petitioner alleges that its lines of railroad and the water line and service described herein are not competitive within the meaning of section 11 of "An act to provide for the opening, maintenance, protection, and operation of the Panama Canal and the sanitation and government of the Canal Zone," approved August 24, 1912;
1311 and that the said water service is being and will be operated in the interest of the public and is and will be of advantage to the convenience and commerce of the people, and that its continuance will neither exclude, prevent, nor reduce competition.

5. From and after July 1, 1914, the steamship company will also engage in traffic between San Francisco and Mazatlan, in the Republic of Mexico. The petitioner alleges that the situation in connection with the handling of said traffic is such as to admit of possible competition between the rail lines of the petitioner and the steamship company; that the steamship company and the railroad lines of the petitioner do not and may not compete for said traffic within the meaning of said act of Congress of August 24, 1912; and that the said water service between said points is being and will be operated in the interest of the public and is and will be of advantage to the convenience and commerce of the people, and that its continuance will neither exclude, prevent, nor reduce competition.

6. From and after July 1, 1914, the petitioner will also engage in the handling of local traffic between San Francisco and Balboa, but as alleged in paragraph 3 hereof, will be unable to engage in
1312 traffic between San Francisco and Balboa for transhipment to or from Atlantic or Gulf ports of the United States or to or from Europe. Petitioner states that said local traffic between San Francisco and Balboa is traffic for which the steamship company and the railroad lines of the petitioner do not and may not compete, and that the water service of the steamship company between said points is being and will be operated in the interest of the public and is and will be of advantage to the convenience and commerce of the people

and that its continuance will neither exclude, prevent, nor reduce competition.

7. The petitioner is advised and believes that the continuance of the existing service hereinbefore set forth as that in which the steamship company will engage from and after July 1, 1914, will not cause the petitioner's ownership of stock in the Pacific Mail Steamship Company to be in violation of said act of Congress of August 24, 1912, but as said act contemplates that application shall be made to this commission not only for permission to continue a service in violation of the statute but likewise for the purpose of determining whether an existing or contemplated situation is or will be in violation thereof, the petitioner in order to avoid any suspicion of
1313 wrongdoing or violation of the said act files this its application with this honorable commission.

Wherefore petitioner prays that a full hearing may be had as provided by section 11 of the act of Congress of August 24, 1912, and that the commission shall make an order or finding with respect to the meaning or interpretation of said act as applied to the facts hereinbefore set forth and for such relief as it may be entitled to receive.

FRED H. WOOD,
C. W. DURBROW,
GEO. D. SQUIRES,
Attorneys for Petitioner.

Of counsel:
J. P. BLAIR,
W. F. HERRIN.

NEW YORK, *February 17, 1914.*

1314 Interstate Commerce Commission, Washington.

I, George B. McGinty, secretary of the Interstate Commerce Commission, do hereby certify that the attached is a true copy of amendment filed May 21, 1914, to application of Southern Pacific Company, under the provisions of section 5 of the act to regulate commerce as amended by section 11 of "An act to provide for the opening, maintenance, protection, and operation of the Panama Canal and the sanitation and government of the Canal Zone," approved August 24, 1912, in connection with the operation of the Pacific Mail Steamship Company, docket No. 6605, the original of which is now on file and of record in the office of this commission.

In testimony whereof I have hereunto subscribed my name and affixed the seal of the commission this 5th day of April, 1915.

GEORGE B. MCGINTY,
Secretary of the Interstate Commerce Commission.

[Seal, Interstate Commerce Commission, 1887.]

1315 Before the Interstate Commerce Commission.

In re application of Southern Pacific Company under the provisio of section 5 of the act to regulate commerce as amended by sectio 11 of "An act to provide for the opening, maintenance, protectio and operation of the Panama Canal and the sanitation and go ernment of the Canal Zone," approved August 24, 1912, in conne tion with the operation of the Pacific Mail Steamship Company.

Amendment of application of Southern Pacific Company.

Now comes Southern Pacific Company (hereinafter called t petitioner) and files this amendment to its application heretofo filed herein, and respectfully shows:

As set forth in the original application filed herein, the Paci Mail Steamship Company (hereinafter called the steamship co pany) is engaged in the transportation of passengers and prope between Atlantic and Pacific ports of the United States a

1316 between Pacific ports of the United States and Europe, whi traffic is now handled across the Isthmus of Panama by rail a to or from the Isthmus by water carriers on the Atlantic side there in which neither the petitioner nor the steamship company has a direct or indirect interest; and, as therein set forth, upon the openi of the Panama Canal it will be impracticable and infeasible to c tinue said service involving transhipment in competition w through service. Petitioner is informed that the said canal w probably not be open for through service until after July 1, 19 after which date it is stated in the original application herein t the steamship company will be unable to engage in said traffic. It h been represented by the commercial and shipping interests of the P cific coast that it would be unfortunate from the standpoint of shipper if the steamship company should discontinue participatio said traffic until the canal is open for through traffic, and that wi out the steamers of the steamship company there would probab not be sufficient steamers to handle this traffic. In view of s representations the steamship company is willing and proposes continue in said traffic, both passenger and freight, until th shall be substituted therefor a satisfactory and equival

1317 through service.

Petitioner also states that in addition to the traffic forth in the original application filed herein, the steamship comp engages in traffic between San Francisco and Mexican and Cen American ports and ports of the West India Islands and the no

east coast of South America. Petitioner states that the water service herein described is being and will be operated in the interest of the public, and is and will be of advantage to the convenience and commerce of the people, and that its continuance will neither exclude, prevent, nor reduce competition.

Wherefore petitioner prays that a full hearing may be had as provided by section 11 of the act of Congress of August 24, 1912, upon the matters herein set forth, as well as upon those set forth in the original application filed herein; and that the commission shall make an order or finding with respect to the meaning or interpretation of said act as applied to the facts hereinbefore set forth; and if continuance in said traffic or any part thereof shall be found to be in violation of the strict letter of said act, that the commission may make an order granting permission for continuance of the service herein described.

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F. H. WOOD,
C. W. DURBROW,
Attorneys for Petitioner.

Of counsel:
J. P. BLAIR.
WM. F. HERRIN.
NEW YORK, *May 20, 1914.*

1319 Interstate Commerce Commission, Washington.

I, George B. McGinty, secretary of the Interstate Commerce Commission, do hereby certify that the attached is a true copy of amendment filed December 7, 1914, to application of Southern Pacific Company, under the provisions of section 5 of the act to regulate commerce as amended by section 11 of "An act to provide for the opening, maintenance, protection, and operation of the Panama Canal and the sanitation and government of the Canal Zone," approved August 24, 1912, in connection with the operation of the Pacific Mail Steamship Company, docket No. 6605, the original of which is now on file and of record in the office of this commission.

In testimony whereof I have hereunto subscribed my name and affixed the seal of the commission this 5th day of April, 1915.

GEORGE B. MCGINTY,
Secretary of the Interstate Commerce Commission.

[Seal, Interstate Commerce Commission, 1887.]

1320 Before the Interstate Commerce Commission.

Application of Southern Pacific Company to amend its applicati
under the provisions of section 5 of the act to regulate commer
as amended by section 11 of "an act to provide for the openi
maintenance, protection, and operation of the Panama Canal a
the sanitation and government of the Canal Zone," approv
August 24, 1912, in connection with the operation of the Pacif
Mail Steamship Company.

Now comes Southern Pacific Company and states that at the ti
of the filing of its application herein it was advised that transhi
ment of traffic between Mexican and Central American ports a
Europe and between Mexican and Central American ports and A
lantic and Gulf ports of the United States, as described in paragra
4 thereof, could be effected by transfer by railroad across the Isthm
of Panama from Balboa to Colon; that it has since been advised th
the Panama Railroad will not handle commercial shipments a
that transfer must be made directly from vessel to vessel at one e
of the canal; and that it is also advised that such transhi-
1321 ment from vessel to vessel cannot be made in all instances
Balboa at the western end of the canal, and that it therefo
may be necessary at times to make transfer of such traffic betwe
Mexican and Central American ports and Europe or Atlantic a
Gulf ports of the United States at Colon as well as at Balboa.

In order, therefore, that said petition may conform to the chan
in conditions, petitioner prays leave to amend the same by insertin
after the word "Balboa" in the sixteenth line of the fourth para
graph thereof the words "or Colon."

H. C. Booth,
Fred H. Wood,
Attorneys for Petitioner.

J. P. Blair,
W. F. Herrin,
Of Counsel.
New York, *December 3, 1914.*

1322 Interstate Commerce Commission, Washington.

I, George B. McGinty, secretary of the Interstate Commerce Com
mission, do hereby certify that the attached is true copy of amend
ment filed April 2, 1915, to amended application of Southern Pacif
Company, under the provisions of section 5 of the act to regula
commerce as amended by section 11 of "An act to provide for th

pening, maintenance, protection, and operation of the Panama anal and the sanitation and government of the Canal Zone," ap-roved August 24, 1912, in connection with the operation of the Pa-ific Mail Steamship Company, docket No. 6605, the original of hich is now on file and of record in the office of this commission.

In testimony whereof I have hereunto subscribed my name and fixed the seal of the commission this 9th day of April, 1915.

GEORGE B. MCGINTY,
Secretary of the Interstate Commerce Commission.

[Seal, Interstate Commerce Commission, 1887.]

1933 Before the Interstate Commerce Commission.

In re Application of Southern Pacific Company to amend its application under the provisions of section 5 of the act to regulate commerce as amended by section 11 of "An act to provide for the opening, maintenance, protection, and operation of the Panama Canal and the sanitation and government of the Canal Zone," approved August 24, 1912, in connection with the operation of the Pacific Mail Steamship Company.

Amendment to amended application.

Now comes Southern Pacific Company and amends its amended application herein by striking out, after the word "Balboa," in the 10th line of the fourth paragraph thereof, the words "or Colon," which said words, "or Colon," were inserted by an amendment to the original application herein, dated New York, December 3, 1914, and transmitted to this honorable commission on December 5, 1914, so that the fourth paragraph of the application herein, as now amended, will be restored to its original condition, and will read as follows:

1934 "4. From and after July 1, 1914, the steamship company will engage (in addition to its Hawaiian-Asiatic traffic hereinbefore described) in traffic between San Francisco and the ports of San Blas, Mazanillo, Acapulco, and Salina Cruz, in the Republic of Mexico; Ocos, Champerico, and San Jose de Guatemala, in the Republic of Guatemala; Acajutla, La Libertad, and La Union, in the Republic of Salvador; Amapala, in the Republic of Honduras; Corinto and San Juan del Sur, in the Republic of Nicaragua; and Punta Arenas, in the Republic of Costa Rica, between said ports above named, between said Mexican and Central American ports and Europe, and between said Mexican and Central American ports and Atlantic and Gulf ports of the United States, which said traffic with

Europe and with the Atlantic and Gulf ports will be handled by the steamship company to or from Balboa and transhipped in connection with the vessels of other lines in no way connected with the petitioner. It will also engage in traffic between the port of Mazatlan, Mexico, and other Mexican and Central American ports above named and between Mazatlan and Atlantic and Gulf ports of the United States.

"The location of the ports named herein is shown by the map attached hereto and made a part hereof, marked 'Exhibit A'

1325 "None of the Mexican and Central American ports above named, except Mazatlan, a point on the Southern Pacific Railroad of Mexico, are reached by any railroad company owned, leased, operated, or controlled by the petitioner or in which the petitioner has any interest whatsoever by stock ownership or otherwise, either directly or indirectly, through any holding company or by stockholders or directors in common or in any other manner. The steamship company and the petitioner do not and could not compete in any manner whatsoever for any of the traffic described in this paragraph; and petitioner alleges that its lines of railroad and the water line and service described herein are not competitive within the meaning of section 11 of 'An act to provide for the opening, maintenance, protection, and operation of the Panama Canal and the sanitation and government of the Canal Zone,' approved August 24, 1912; and that the said water service is being and will be operated in the interest of the public and is and will be of advantage to the convenience and commerce of the people, and that its continuance will neither exclude, prevent, nor reduce competition."

1326 FRED H. WOOD,
H. C. BOOTH,
Attorneys for Petitioner.

J. P. BLAIR,
W. F. HERRIN,
Of Counsel.
Dated, New York, March , 1915.

(Pursuant to stipulation at page 1937 of the testimony, the remainder of Defendants' Exhibit No. 52, being the report of the Interstate Commerce Commission upon the foregoing application, may be referred to in the officially printed and bound volumes of reports of the Interstate Commerce Commission, with the same effect as if incorporated in the record.)

1327 DEFENDANTS' EXHIBIT (GRIGGS) NO. 53, APRIL 20, 1915.

Report of the Attorney General.

DEPARTMENT OF JUSTICE,
Washington, D. C., November 30, 1899.

To the Senate and House of Representatives of the United States of America in Congress assembled:

* * * * * * *

Pacific Railroad matters.—The deficiency appropriation act of July 7, 1898 appointed the Secretary of the Treasury, the Secretary of the Interior, and the Attorney General a commission, with full power to settle the indebtedness to the Government growing out of the issue of bonds to aid in the construction of the Central Pacific and Western Pacific bond-aided railroads, upon such terms and in such manner as might be agreed upon by them, or by a majority of them, and the owners of said railroads, subject to the approval of the President.

1328 An agreement for the settlement of this indebtedness was entered into between the said commissioners with the railroad companies on February 1, 1899. At that date the amount due the United States for principal and interest upon its subsidy liens upon the Central Pacific and Western Pacific Railroads was $58,-112,715.48, more than one-half of which was accrued interest upon the principal debt. The agreement of settlement provided for the funding of this amount into 20 promissory notes bearing date February 1, 1899, payable, respectively, on or before the expiration of each successive six months for ten years, each note being for the sum of $2,940,635.78, or one-twentieth of the total amount due. The notes bear interest at the rate of 3 per cent per annum, payable semiannually, and have a condition attached to the effect that if default be made, either in the payment of principal or interest of either of said notes or in any part thereof, then all of the said notes outstanding, principal and interest, shall immediately become due and payable notwithstanding any other stipulation of the agreement of settlement.

It was further agreed that the payment of the principal and 1329 interest of the notes shall be secured by the deposit with the United States Treasury of $58,820,000 of face value of first refunding mortgage 4 per cent gold bonds, to be thereafter issued by the Central Pacific or its successor having charge of the railroads then owned by said company, such bonds to be part of an issue of not exceeding $100,000,000 in all, and to be secured by mortgage

upon all railroads, equipments, and terminals owned by said Central Pacific Railroad Company, such mortgage to be a first lien upon such property or to be secured by the deposit as collateral of certain percentages of the outstanding bonds upon such property or on the different divisional parts thereof.

The notes provided for by this agreement were duly executed and delivered to the Treasurer of the United States in conformity with the terms of the agreement. In pursuance of another provision of the agreement the four earliest maturing notes were purchased by Speyer & Co. March 10, 1899, and the proceeds, amounting to $11,762,543.12 and accrued interest to the date of payment $35,771.02, in all $11,798,314.14, were received and covered into the Treasury March 27, 1899, as part payment of the indebtedness of the Central Pacific and Western Pacific Railroad Companies. The properties of the various companies comprising the Central Pacific system were subsequently conveyed to a new corporation called the Central Pacific Railway Company, which latter company executed the mortgage and bonds provided for by the agreement of settlement. On October 7, 1899, bonds were delivered to the Treasury Department by the Pacific Railway Company to secure the outstanding notes held by the Treasury in conformity to the terms of the agreement of settlement. The United States therefore holds the notes of the Central Pacific Railroad Company guaranteed by the Southern Pacific Railroad Company to the amount of $47,050,172.80, bearing interest payable semiannually at the rate of 3 per cent per annum and secured by the deposit of an equal amount of first mortgage bonds of the Pacific Railway Company, thus providing beyond doubt or peradventure for the sure and gradual payment of the whole of this subsidy debt, and providing in the meantime for the payment of interest at the rate of 3 per cent upon the unpaid balances.

In my report for the year 1898 I advised the Congress that the whole amount of principal and interest due on the Union Pacific subsidy had been realized and paid into the Federal Treasury, and that of the amount due upon the Kansas Pacific subsidy the whole amount of the principal, namely, $6,303,000 had been paid in, leaving due to the Government only the accrued interest on the Kansas Pacific, amounting to about $6,500,000. I further reported that I had caused to be filed a claim on behalf of the United States on account of this deficiency against certain funds remaining in the hands of the receivers of the Union Pacific Railway Company, which claims, along with many others aggregating a large sum, were subject to investigation and subsequent adjudication. The matter has since been brought to a conclusion, with the very satis-

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factory result that the United States procured a decree directing the receivers to pay on account of its deficiency debt out of the moneys in their hands as pro rata dividend upon its deficiency claim the sum of $821,897.70, which sum has recently been paid into the Treasury of the United States and is to be credited against the deficiency above mentioned.

The proceedings referred to in my last report pending against the American Loan and Trust Company of Boston as trustee for the purpose of securing on account of the Government's deficiency claim certain moneys in the hands of such trustee which represent the proceeds of securities mortgaged for the benefit and further security of first-mortgage bonds of the Kansas Pacific Railway, and for the benefit, protection, and further security of the United States in respect to their subsidy bonds and interest thereon, have not yet been brought to a conclusion, but are being pressed with all due diligence, and before long I hope to be able to report the collection of a very substantial sum from this source in further reduction of the deficiency due the Government on this account.

The amounts paid or secured to be paid to the United States on account of Pacific Railroad subsidy claims since November 1, 1897, will appear from the following table:

Union Pacific, cash	$58,448,223.75
Kansas Pacific, cash	6,303,000.00
Central and Western Pacific—	
Cash	11,798,314.14
Notes	47,050,172.36
Kansas Pacific, dividend on deficiency due United States, cash	821,897.70
Total	124,421,607.95

So that it appears that out of an indebtedness of about $130,000,000, more than one-half of which consists of accrued interest, the Government has realized in cash or its equivalent the sum of $124,421,670.95 within a period of less than two years.

Taking into account the enormous material benefits that have accrued to the country from the construction of these transcontinental lines of communication and the advantage which the Government has had by way of reduced rates of transportation and service over them, the participation of the Government in the construction and maintenance of these enterprises has been fully justified and the faith of the original promoters and projectors of these great lines has been proven to have had a substantial basis.

* * * * * * *

1334 DEFENDANTS' EXHIBIT (SPENCE) No. 54, APRIL 21, 1915.

(Official map of Rand, McNally & Company showing in differ colors, on a scale of thirty-five miles to the inch, all of the lines braced within the Southern Pacific system.)

1335 DEFENDANTS' EXHIBIT (SPENCE) No. 55, APRIL 21, 1915.

(Official map of Rand, McNally & Company showing in differ colors, on a scale of 160 miles to the inch, all of the lines embra within the Southern Pacific system.)

1336 DEFENDANTS' EXHIBIT (SPENCE) No. 56, APRIL 21, 1915.

(Map showing, in red, lines embraced within the Southern Pac system, and, in green, all other lines engaged in transcontine business December 31, 1900.

1337 DEFENDANTS' EXHIBIT (SPENCE) No. 57, APRIL 21, 1915.

(Map showing, in red, lines embraced within the Southern Pac system, and, in green, all other lines engaged in transcontine business October 1, 1914.)

1338 DEFENDANTS' EXHIBIT (SPENCE) No. 58, APRIL 22, 1915.

Lines maintaining soliciting organizations in California.

Atchison, Topeka & Santa Fe Railway.
Baltimore & Ohio Railroad.
Canadian Pacific Railway.
Chesapeake & Ohio Railway.
Chicago, Burlington & Quincy Railroad.
Chicago Great Western Railroad.
Chicago, Milwaukee & St. Paul Railway.
Chicago, Rock Island & Pacific Railway.
Chicago & Alton Railroad.
Chicago & Eastern Illinois Railroad.
Chicago & North Western Railway.
Colorado Midland Railway.
Colorado & Southern Railway.
Delaware, Lackawanna & Western Railroad.
Denver & Rio Grande Railroad.
El Paso & Southwestern System.
Empire Fast Freight Line.

MAPS

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1339 Erie Railroad.
Grand Trunk Railway System.
Great Northern Railway.
Illinois Central Railroad.
Kansas City, Mexico & Orient Railway.
Kansas City Southern Railway.
Lehigh Valley Railroad.
Minneapolis, St. Paul & Sault Ste. Marie Railway.
Minneapolis & St. Louis Railroad.
Missouri, Kansas & Texas Railway.
Missouri Pacific Railway.
New York Central Lines.
Nickel Plate.
Northern Pacific Railway.
Oregon Short Line.
Oregon-Washington Railroad & Navigation Co.
Pennsylvania System.
Pere Marquette Railroad.
Queen & Crescent Route.
San Pedro, Los Angeles & Salt Lake Railroad.
Southern Railway.
St. Louis, Iron Mountain & Southern Railway.
1340 St. Louis Southwestern Railway.
St. Louis & San Francisco Railroad.
Texas & Pacific Railway.
Toledo, St. Louis & Western Railroad.
Union Pacific Railroad.
Wabash Railroad.
Western Pacific Railway.
Total, 46.

1341 DEFENDANTS' EXHIBIT (SPENCE) No. 59, APRIL 22, 1915.

Lines maintaining soliciting organizations in Atlantic seaboard territory.

Atchison, Topeka & Santa Fe Railway.
Baltimore & Ohio Railroad.
Boston & Albany Railroad.
Boston & Maine Railroad.
Canadian Pacific Railway.
Central Railroad of New Jersey.
Chesapeake & Ohio Railway.
Chicago & Alton Railroad.
Chicago & North Western Railway.

Chicago, Burlington & Quincy Railroad.
Chicago Great Western Railroad.
Chicago, Milwaukee & St. Paul Railway.
Chicago, Rock Island & Pacific Railway.
Cincinnati, Hamilton & Dayton Railroad.
Cincinnati, New Orleans & Texas Pacific Ry.
Cleveland, Cincinnati, Chicago & St. Louis Ry.
1342 Colorado & Southern Railway.
Colorado Midland Railway.
Delaware & Hudson Company.
Delaware, Lackawanna & Western Railroad.
Denver & Rio Grande Railroad.
El Paso & Southwestern System.
Erie Railroad.
Grand Trunk Railway System.
Illinois Central Railroad.
Kansas City, Mexico & Orient Railway.
Kansas City Southern Railway.
Lake Erie & Western Railroad.
Lake Shore & Michigan Southern Railway.
Lehigh Valley Railroad.
Louisville & Nashville Railroad.
Michigan Central Railroad.
Minneapolis, St. Paul & Sault Ste. Marie Railway.
Missouri, Kansas & Texas Railway.
Missouri Pacific Railway.
New York Central & Hudson River Railroad.
New York, Chicago & St. Louis Railroad (Nickel Plate).
New York, New Haven & Hartford Railroad.
1343 Norfolk & Western Railway.
Northern Pacific Railway.
Oregon Short Line.
Oregon-Washington Railroad & Navigation Co.
Pennsylvania System.
Philadelphia & Reading Railway.
Pittsburgh, Cincinnati, Chicago & St. Louis Ry.
Queen & Crescent Route.
St. Louis & San Francisco Railroad.
St. Louis, Iron Mountain & Southern Ry.
St. Louis Southwestern Railway.
San Pedro, Los Angeles & Salt Lake Railroad.
Seaboard Air Line Railroad.
Southern Railway.
Toledo, Peoria & Western Railway.
Toledo, St. Louis & Western Railroad.

Union Pacific Railroad.
Vicksburg, Shreveport & Pacific Railway.
Wabash Railroad.
Western Pacific Railway.
West Shore Railroad.
Total, 59.

3344 DEFENDANTS' EXHIBIT (SPENCE) No. 60, APRIL 22, 1915.

Daily passenger-train service via Sunset Route.

March, 1883.—One through train daily in each direction between New Orleans and San Francisco.
Time between New Orleans and San Francisco:
Westbound: 5 days, 4 hours, 40 minutes.
Eastbound: 5 days, 4 hours, 55 minutes.
Time between New York and San Francisco:
Westbound: 7 days, 20 hours, 40 minutes.
Eastbound: 7 days, 17 hours, 55 minutes.
Time procured from schedules shown on pages 238, 239, and 356 of the Travelers' Official Guide, dated March, 1883.
December, 1885.—One through train daily in each direction between New Orleans and San Francisco.
Time between New Orleans and San Francisco:
Westbound: 4 days, 17 hours, 10 minutes.
Eastbound: 4 days, 14 hours, 10 minutes.
3345 Time between New York and San Francisco:
Westbound: 6 days, 22 hours.
Eastbound: 6 days, 21 hours, 10 minutes.
Time procured from schedules shown on pages 235, 236, and 439 of the Travelers' Official Guide dated December, 1885.
December, 1900.—One through train daily in each direction between New Orleans and San Francisco.
Time between New Orleans and San Francisco:
Westbound: 4 days, 1 hour, 30 minutes.
Eastbound: 3 days, 23 hours, 30 minutes.
Time between New York and San Francisco:
Westbound: 5 days, 17 hours, 15 minutes.
Eastbound: 5 days, 16 hours, 43 minutes.
NOTE.—During the winter months of 1900–1901 a Sunset Limited train was operated three times weekly in each direction.
Time procured from schedules shown on pages 517 and 798 of the Official Guide dated December, 1900.
3346 December, 1914.—Two through trains daily in each direction between New Orleans and San Francisco.

Time between New Orleans and San Francisco (Sunset Limited):
Westbound: 3 days, 6 hours, 30 minutes.
Eastbound: 3 days, 2 hours, 10 minutes.
Time between New York and San Francisco:
Westbound: 5 days, 1 hour, 55 minutes.
Eastbound: 4 days, 18 hours, 0 minutes.
Time procured from schedules shown on pages 811 and 1234 of th
Official Guide dated December, 1914.
The time between New York and San Francisco via Southern Pa
cific steamers, twice weekly in each direction, is:
Westbound: 8 days, 6 hours, 30 minutes.
Eastbound: 8 days, 11 hours, 40 minutes.

1347 DEFENDANTS' EXHIBIT (SPENCE No. 61, APRIL 22, 1915.

Daily passenger train service via Ogden route.

March, 1883.—No through train, but direct connections made dail
at Omaha and Ogden.
Time between Chicago and San Francisco:
Westbound: 5 days, 1 hour, 10 minutes.
Eastbound: 4 days, 20 hours, 45 minutes.
Time between New York and San Francisco:
Westbound: 6 days, 5 hours, 30 minutes.
Eastbound: 6 days, 2 hours, 30 minutes.
Time procured from schedules shown on pages 171 and 247 of th
Travelers' Official Guide dated March, 1883.
December, 1885.—No through train, but direct connections mad
daily at Omaha and Ogden.
Time between Chicago and San Francisco:
Westbound: 4 days, 15 hours, 10 minutes.
1348 Eastbound: 4 days, 13 hours, 50 minutes.
Time between New York and San Francisco:
Westbound: 5 days, 20 hours, 10 minutes.
Eastbound: 6 days.
Time procured from schedules shown on pages 221 and 311 of th
Travelers' Official Guide dated December, 1885.
December, 1900.—Two through trains daily westbound and thr
daily eastbound between Chicago and San Francisco.
Time between Chicago and San Francisco (Overland Limited):
Westbound: 3 days, 2 hours, 15 minutes.
Eastbound: 2 days, 21 hours, 30 minutes.
Time between New York and San Francisco:
Westbound: 4 days, 4 hours, 15 minutes.
Eastbound: 4 days, 0 hours, 30 minutes.

Time procured from schedules shown on pages 176 and 519 of the Official Guide dated December, 1900.

49 December, 1914.—Three through trains daily westbound and four daily eastbound between Chicago and San Francisco.

Time between Chicago and San Francisco (Overland Limited):

Westbound: 2 days, 17 hours, 10 minutes.

Eastbound: 2 days, 15 hours, 30 minutes.

Time between New York and San Francisco:

Westbound: 3 days, 18 hours, 25 minutes.

Eastbound: 3 days, 14 hours, 20 minutes.

Time procured from schedules shown on pages 235 and 809 of the Official Guide dated December, 1914.

50 DEFENDANTS' EXHIBIT (SPENCE) No. 62, APRIL 22, 1915.

S—31.

Statement showing total tonnage from and to all territories moving a Ogden, as compared with movement to and from Atlantic aboard territory, for the year ended June 30, 1914:

	Eastbound.		Westbound.		Total.	
	Tons.	%	Tons.	%	Tons.	%
lantic seaboard territory..	154,229	20.6	68,916	11.2	223,145	16.3
her territories.....	592,588	79.4	549,009	88.8	1,141,597	83.7
Total.....	746,817	100.0	617,925	100.0	1,364,742	100.0

51 DEFENDANTS' EXHIBIT (SPENCE) No. 63, APRIL 22, 1915.

S—1.

Statement of commercial freight tonnage and revenue of the South-n Pacific Company on traffic moved via El Paso gateway (includ-g relatively small amount of traffic interchanged with A., T. & S. F. y., at Deming, N. M.) between all points west of Ogden, Utah, open traffic via Ogden gateway and Atlantic seaboard territory: Com-rising all points east of a line from Toronto, via Buffalo and Pitts-urgh, to Bristol, Tenn., and north of the line of the Norfolk & West-n Railway from Bristol to the Atlantic Ocean, for the year ended une 30, 1914.

	Tons.	Revenue.
astbound	85,059	1,202,109
estbound	94,737	1,899,083
Total east and west bound	179,796	3,101,292

1352 DEFENDANTS' EXHIBIT (SPENCE) No. 64, APRIL 22, 1915.

S—2.

Statement of commercial freight tonnage and revenue of the Southern Pacific Company on traffic moved via El Paso gateway (including relatively small amount of traffic interchanged with A., T. & S. F. Ry., at Deming, N. M.) between all points west of Ogden, Utah, open to traffic via Ogden gateway and Middle West territory: Comprising all points on and east of the line of the C., R. I. & P. Ry., from Kansas-Oklahoma State line via McFarland and Belleville, Kansas, and Des Moines, Iowa, to St. Paul, north of the northern boundary of Oklahoma and Arkansas, north of the Ohio River and west of the Atlantic seaboard territory, for the year ended June 30, 1914:

	Tons.	Revenue.
Eastbound	222,325	1,838,62[illegible]
Westbound	219,246	2,311,28[illegible]
Total east and west bound	441,571	4,149,91[illegible]

1353 DEFENDANTS' EXHIBIT (SPENCE) No. 65, APRIL 22, 1915.

S—3.

Comparsion of commercial freight tonnage and revenue of Southern Pacific Company on traffic moved by El Paso gateway with that moved by Ogden gateway between all points west of Ogden, Utah, open to traffic via Ogden on the one hand and Atlantic seaboard territory and Middle West territory on the other hand, for the year ended June 30, 1914.

Atlantic seaboard territory.

	Via El Paso.		Via Ogden.	
	Tons.	Revenue.	Tons.	Revenue.
Eastbound	85,059	1,202,109	154,229	[illegible]
Westbound	94,737	1,899,083	68,916	[illegible]
East and west bound	179,796	3,101,292	223,145	1,519,[illegible]

Middle West territory.

	Via El Paso.		Via Ogden.	
	Tons.	Revenue.	Tons.	Revenue.
Eastbound	222,325	1,838,626	368,975	2,576,[illegible]
Westbound	219,246	2,311,285	259,648	2,451,[illegible]
East and west bound	441,571	4,149,911	628,623	5,028,[illegible]

4 DEFENDANTS' EXHIBIT (SPENCE) No. 66, APRIL 22, 1915.

S—4.

Statement of commercial tonnage and revenue of Southern Pacific mpany on traffic which originated, passed over, or was delivered on ntral Pacific Railroad moving via Ogden gateway to and from lantic seaboard territory for the year ended June 30, 1914:

[Even tons and dollars.]

	Tons.	Revenue.
stbound	154, 229	926, 433
stbound	68, 916	593, 339
East and west bound	223, 145	1, 519, 772

5 DEFENDANTS' EXHIBIT (SPENCE) No. 67, APRIL 22, 1915.

S—5.

Statement of Commercial tonnage and revenue of Southern Pacific mpany on traffic which originated, passed over, or was delivered Central Pacific Railroad moving via Ogden gateway to and from iddle West territory:

	Tons.	Revenue.
stbound	368, 975	2, 576, 384
stbound	259, 648	2, 451, 700
East and west bound	628, 623	5, 028, 084

6 DEFENDANTS' EXHIBIT (SPENCE) No. 68, APRIL 22, 1915.

S—6.

Comparison of commercial tonnage and revenue of Southern acific Company on traffic via El Paso and via Ogden which origi- ated, passed over, or was delivered on Central Pacific Railroad to nd from Atlantic seaboard territory and Middle West territory, r the year ended June 30, 1914.

[Even tons and dollars.]

Atlantic seaboard territory.

	Via El Paso.		Via Ogden.	
	Tons.	Revenue.	Tons.	Revenue.
stbound	34, 812	646, 005	154, 229	926, 433
stbound	50, 045	1, 093, 267	68, 916	593, 339
East and west bound	84, 857	1, 739, 272	223, 145	1, 519, 772

Middle West territory.

	Via El Paso.		Via Ogden.	
	Tons.	Revenue.	Tons.	Revenue.
Eastbound	31,180	269,457	368,975	2,576,296
Westbound	63,734	665,035	259,648	2,451,790
East and west bound	94,914	934,492	628,623	5,028,086

1357 DEFENDANTS' EXHIBIT (SPENCE) No. 68½, APRIL 22, 1915.

S—7

Statement of commercial freight tonnage and revenue of the Southern Pacific Company on traffic moved via Ogden gateway, between all points in Nevada and Atlantic Seaboard Territory, for the year ended June 30, 1914.

[Even tons and dollars.]

	Tons.	Revenue.
Eastbound	28,234	45,651
Westbound	2,138	30,196
East and west bound	30,372	75,849

1358 DEFENDANTS' EXHIBIT (SPENCE) No. 69, APRIL 22, 1915.

S—8.

Statement of commercial freight tonnage and revenue of the Southern Pacific Company on traffic moved via Ogden gateway, between all points in Nevada and Middle West territory, for the year ended June 30, 1914.

[Even tons and dollars.]

	Tons.	Revenue.
Eastbound	16,852	140,071
Westbound	25,898	286,227
East and west bound	42,750	426,298

1359 DEFENDANTS' EXHIBIT (SPENCE) No. 70, APRIL 22, 1915.

S—9.

Comparison of commercial tonnage and revenue of Southern Pacific Company on traffic moved via El Paso and Ogden gateways between all points in Nevada and Atlantic seaboard territory and Middle West territory for the year ended June 30, 1914.

[Even tons and dollars.]

Atlantic seaboard territory.

	Via El Paso.		Via Ogden.	
	Tons.	Revenue.	Tons.	Revenue.
Eastbound	0	0	28, 234	45, 651
Westbound	539	13, 281	2, 138	30, 198
East and west bound	539	13, 281	30, 372	75, 849

Middle West territory.

	Via El Paso.		Via Ogden.	
	Tons.	Revenue.	Tons.	Revenue.
Eastbound	0	0	16, 852	140, 071
Westbound	30	959	25, 898	286, 237
East and west bound	30	959	42, 750	426, 308

1360 DEFENDANTS' EXHIBIT (SPENCE) No. 71, APRIL 22, 1915.

S—10.

Statement of commercial tonnage and revenue of Southern Pacific Company on traffic moved via Ogden gateway between all points in Oregon and beyond and in California north of Roseville, Davis, Elmira, Suisun, and South Vallejo and Atlantic seaboard territory for the year ended June 30, 1914.

[Even tons and dollars.]

	Tons.	Revenue.
Eastbound	27, 517	167, 059
Westbound	4, 684	40, 233
East and west bound	32, 201	207, 292

1361 DEFENDANTS' EXHIBIT (SPENCE) No. 72, APRIL 22, 1915.

S—11.

Statement of commercial tonnage and revenue of Southern Pacific Company on traffic moved via Ogden gateway between all points in Oregon and beyond and in California north of Roseville, Davis, Elmira, Suisun, and South Vallejo and Middle West territory for the year ended June 30, 1914.

[Even tons and dollars.]

	Tons.	Revenue.
Eastbound	86,165	471,2
Westbound	17,362	186,1
East and west bound	103,527	657,3

1362 DEFENDANTS' EXHIBIT (SPENCE) No. 73, APRIL 22, 1915.

S—12.

Comparison of tonnage and revenue of Southern Pacific Company via El Paso as shown in petitioner's Exhibits Nos. 55 and 56 with that via Ogden on traffic moved between Atlantic seaboard territory and Middle West territory on one hand and points in Oregon and beyond, and in California north of Roseville, Davis, Elmira, Suisun, and South Vallejo for the year ended June 30, 1914:

Atlantic seaboard territory.

	Via El Paso.		Via Ogden.	
	Tons.	Revenue.	Tons.	Revenue.
Eastbound	22,161	426,324	27,517	167,8
Westbound	2,801	84,260	4,684	40,2
East and west bound	24,962	510,584	32,201	207,3

Middle West territory.

	Via El Paso.		Via Ogden.	
	Tons.	Revenue.	Tons.	Revenue.
Eastbound	5,351	51,384	86,165	471,2
Westbound	13,122	124,919	17,362	186,1
East and west bound	18,473	176,303	103,527	657,3

1363 DEFENDANTS' EXHIBIT (SPENCE) No. 74, APRIL 22, 1915.

S—13.

Statement of commercial tonnage and revenue of Southern Pacific Company on traffic moved via Ogden gateway between San Francisco and Oakland, California, and Atlantic seaboard territory for the year ended June 30, 1914:

[Even tons and dollars.]

	Tons.	Revenue.
Eastbound	14,025	127,697
Westbound	44,214	380,256
East and west bound	58,239	507,953

1364 DEFENDANTS' EXHIBIT (SPENCE) No. 75, APRIL 22, 1915.

S—14.

Statement of commercial tonnage and revenue of Southern Pacific Company on traffic moved via Ogden gateway between San Francisco and Oakland, California, and Middle West territory for the year ended June 30, 1914:

[Even tons and dollars.]

	Tons.	Revenue.
Eastbound	52,432	336,713
Westbound	126,237	1,140,547
East and west bound	178,669	1,477,260

1365 DEFENDANTS' EXHIBIT (SPENCE) No. 76, APRIL 22, 1915.

S—15.

Comparison of commercial tonnage and revenue of Southern Pacific Company on traffic moved via El Paso gateway and via Ogden gateway between San Francisco and Oakland, California, and Atlantic seaboard territory and Middle West territory, for the year ended June 30, 1914:

[Even tons and dollars.]

ATLANTIC SEABOARD TERRITORY.

	Via El Paso.		Via Ogden.	
	Tons.	Revenue.	Tons.	Revenue.
Eastbound	4,598	95,841	14,025	127,697
Westbound	38,933	920,502	44,214	380,256
East and west bound	43,531	1,016,343	58,239	507,953

MIDDLE WEST TERRITORY.

	Via El Paso.		Via Ogden.	
	Tons.	Revenue.	Tons.	Revenue.
Eastbound	10,295	76,209	52,432	336,713
Westbound	40,497	433,465	126,237	1,140,547
East and west bound	50,792	509,674	178,669	1,477,260

1366 DEFENDANTS' EXHIBIT (SPENCE) No. 77, APRIL 22, 1915.

S—17.

Statement of commercial tonnage moved via El Paso and Ogden between points in California, Banning to Mojave and Santa Barbara, inclusive, and points in Oregon on one hand and points in Atlantic seaboard territory on the other, for the year ended June 30, 1914:

	Eastbound.	Westbound.	Total.
	Tons.	*Tons.*	*Tons.*
Southern California	41,105	37,617	78,722
Oregon	7,533	1,743	9,276

1367 DEFENDANTS' EXHIBIT (SPENCE) No. 78, APRIL 22, 1915.

S—16.

Statement of commercial tonnage moved via El Paso and Ogden between points in California, Banning to Mojave and Santa Barbara, inclusive, and points in Oregon on one hand and points in Middle West territory on the other, for the year ended June 30, 1914:

	Eastbound.	Westbound.	Total.
	Tons.	*Tons.*	*Tons.*
Southern California	178,978	139,724	318,702
Oregon	1,878	10,716	12,594

1368 DEFENDANTS' EXHIBIT (SPENCE) No. 79, APRIL 22, 1915.

S—18.

Statement of commercial tonnage moved between points west of Ogden, Utah, south of the Oregon-California State line and north

of Mojave and Santa Barbara on the one hand and Middle West territory on the other hand, for the year ended June 30, 1914:

	Eastbound.		Westbound.		Total.	
	Tons.	Per cent.	Tons.	Per cent.	Tons.	Per cent.
Via Ogden	331,218	80.7	241,407	73.5	572,625	77.5
Via Sunset-Gulf	1,244	.3	13	0	1,257	.2
Via New Orleans	1,177	.3	11,278	3.4	12,455	1.7
Via El Paso and other gateways east thereof except New Orleans	76,777	18.7	75,754	23.1	152,531	20.6
Total	410,416	100	328,452	100	738,868	100

1369 DEFENDANTS' EXHIBIT (SPENCE) No. 80, APRIL 22, 1915.

S—26.

Statement of commercial tonnage moved between points west of Ogden, Utah, south of the Oregon-California State line and north of Mojave and Santa Barbara on the one hand and Atlantic seaboard territory on the other hand, for the year ended June 30, 1914:

	Eastbound.		Westbound.		Total.	
	Tons.	Per cent.	Tons.	Per cent.	Tons.	Per cent.
Via Ogden	140,900	73.4	66,101	53.1	207,001	65.4
Via Sunset-Gulf	37,166	19.3	41,762	33.5	78,928	24.9
Via New Orleans	603	.3	2,174	1.7	2,777	.9
Via El Paso and other gateways east thereof except New Orleans	13,362	7	14,546	11.7	27,908	8.8
Total	192,031	100	124,583	100	316,614	100

1370 DEFENDANTS' EXHIBIT (SPENCE) No. 81, APRIL 22, 1915.

S—37.

Statement of commercial freight interchanged between Southern Pacific Company and Union Pacific Railroad Company at Ogden, Utah, for the fiscal years ended June 30, 1913 and 1914:

	1913, tons.	1914, tons.
Eastbound	606,122	598,035
Westbound	547,861	469,406

1371 DEFENDANTS' EXHIBIT (SPENCE) No. 82, APRIL 22, 1915.

S—22.

Comparison of tonnage to and from Middle West territory mo via El Paso, which had origin or destination on Central Pacific bo aided line, with tonnage moved via Ogden, which had origin or d tination on Southern Pacific or Central Pacific nonbond-aided li for the year ended June 30, 1914:

	Eastbound.	Westbound.	Tot
Via El Paso	5,765	9,233	14
Via Ogden	329,589	233,689	563

Movement via Ogden is over 3,755% of movement via El Pas

1372 DEFENDANTS' EXHIBIT (SPENCE) No. 83, APRIL 22, 1915.

S—30.

Comparison of tonnage to and from Atlantic seaboard terri moved via El Paso, which had origin or destination on Central Pa bond-aided line, with tonnage moved via Ogden, which had or or destination on Southern Pacific or Central Pacific nonbond-a line, for the year ended June 30, 1914:

	Eastbound.	Westbound.	To
Via El Paso	6,237	7,586	
Via Ogden	112,306	66,547	17

Movement via Ogden is 1,303% of the movement via El Paso.

1373 DEFENDANTS' EXHIBIT (SPENCE) No. 84, APRIL 22, 1915.

Map showing alternative competing routes for transconti traffic of the Chicago, Milwaukee & St. Paul Railway Compa

1374 DEFENDANTS' EXHIBIT (SPENCE) No. 85, APRIL 22, 1915.

Map showing alternative competing routes for transcontin traffic of the Union Pacific Railroad Company.

MAPS

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875 DEFENDANTS' EXHIBIT (SPENCE) No. 86, APRIL 22, 1915.

Map showing alternative competing routes for transcontinental traffic of the Missouri Pacific system, consisting of the Missouri Pacific Railway, the Denver & Rio Grande Railroad, and the Western Pacific Railway.

876 DEFENDANTS' EXHIBIT (SPENCE) No. 87, APRIL 22, 1915.

Map showing alternative competing routes for transcontinental traffic of the Atchison, Topeka & Santa Fe Railway.

877 DEFENDANTS' EXHIBIT (SPENCE) No. 88, APRIL 22, 1915.

Map showing alternative competing routes for transcontinental traffic of the Great Northern Railway.

878 DEFENDANTS' EXHIBIT (SPENCE) No. 89, APRIL 22, 1915.

Map showing alternative competing routes for transcontinental traffic of the Chicago and North Western Railway.

879 DEFENDANTS' EXHIBIT (SPENCE) No. 90, APRIL 22, 1915.

Map showing alternative competing routes for transcontinental traffic of the Chicago, Rock Island & Pacific Railway.

880 DEFENDANTS' EXHIBIT (SPENCE) No. 91, APRIL 22, 1915.

Map showing alternative competing routes for transcontinental traffic of the Chicago, Burlington & Quincy Railroad.

881 DEFENDANTS' EXHIBIT (SPENCE) No. 92, APRIL 22, 1915.

Map showing alternative competing routes for transcontinental traffic of the Pennsylvania Railroad system.

882 DEFENDANTS' EXHIBIT (SPENCE) No. 93, APRIL 22, 1915.

Map showing alternative competing routes for transcontinental traffic of the Baltimore & Ohio Railroad system.

883 DEFENDANTS' EXHIBIT (SPENCE) No. 94, APRIL 22, 1915.

Map showing alternative competing routes for transcontinental traffic of the New York Central lines.

[1—Extract from the Commercial and Financial Chronicle, February 18, 1
volume 68, pages 329 and 330.]

Central Pacific R. R.—Settlement—Official announcement—Re
justment plan.—Messrs. Speyer & Co. make the following announ
ment: "The agreement of settlement of the Central Pacific R. R.
has been executed by the railroad company and by the Governm
commission, and approved by the President. The agreement p
vides for the payment in full of the debt of the railroad compa
principal and interest, amounting to about $59,000,000, in twe
equal half-yearly installments, running with 3 per cent interest,
first one to mature August 1, 1899. The twenty notes given by
railroad company to correspond with these installments are to
secured by an equal amount of first refunding bonds, which are to
created under the readjustment plan shortly to be promulgated h
and in Europe. The readjustment of the financial affairs of the r
road company is to be in charge of Messrs. Speyer & Co., New Yo
Messrs. Speyer Brothers, London; Laz Speyer Ellisen, Fra
1385 fort-on-the-Main; Messrs. Teixeira de Mattos Brothers, A
sterdam, and the Deutsche Bank of Berlin."

The sum due as of Feb. 1 was $58,812,714, composed of the follo
ing items:

Central Pacific debt February 1, $25,885,120 principal and $
604,385 interest, less $9,100,452 of judgments, bonds, and sinki
fund, leaving net liabililty $53,389,052. The amount due by
Western Pacific on the same date was $5,423,662, making the to
sum due by the two roads $58,812,714.

The agreement will obviate the necessity of foreclosure.

The act under which the settlement is made was passed by Congr
last July, and was given in full in our issue of July 2, page 27. T
act appoints the Secretary of the Treasury, the Secretary of the In
rior, and the Attorney General a commission with full power to se
the indebtedness, provided that any and all settlements shall be s
mitted in writing to the President for his approval or disappro
and unless approved by him shall not be binding. (V. 67, pp. 11
1163.)

1386 [2—Extract from the Commercial and Financial Chronicle, February
1899, volume 68, pages 352 to 354.]

The Central Pacific reorganization plan.

The plan just submitted for the reorganization of the Cen
Pacific property seems thorough and complete. It accompli
three distinct objects, each important in itself and essential to

sound and comprehensive scheme for establishing the property firmly in public estimation and confidence. In the first place, it secures that prime prerequisite, the adjustment and settlement of the indebtedness owing to the United States. In the second place, it accomplishes that other and hardly less desirable object, the placing of the relations between the Central Pacific and the Southern Pacific on a definite and assured basis, removing cause for future misunderstanding and controversy. In the third place, it provides for the complete refunding at a lower rate of interest of all the bonded indebtedness of the Central Pacific, while at the same time furnishing needed cash for present and future capital wants.

1387 As far as the settlement with the United States is concerned, the country certainly has no reason to complain. The Government gets the full amount of its claim, both principal and interest, namely $58,812,715. Such favorable terms for it were considered as hardly within the range of probabilities, or even possibilities, only a short time ago. By this we mean that few thought the company could safely undertake to carry a burden of obligations such a settlement on such a basis involved. No doubt, if the claim had been held by a private creditor it could not have been collected in full. A spirit of equity and fairness would have required part abatement of the claim. In the case of the United States as a public creditor, the occasion for leniency and concession was tenfold greater. The country as a whole, and the Government in particular, has derived incalculable advantages and blessings from the building of the road as part of the first route across the continent. Besides this, the United States is strong and prosperous, and would have suffered no hardship or inconvenience if it had agreed to forego a portion of its large claim. But Congress was unyielding. Its action was controlled by those antagonistic to the road. These people succeeded in having a 1388 law passed forbidding a settlement involving compromise or concession. The full pound of flesh was demanded—nothing less. This was the situation confronting the security holders and those administering the property. The company was practically without alternative but to accept them, merciless and unfair though they certainly were and onerous as they seemed likely to prove. And quick action, too, was called for, since this law declares that a settlement, even on these harsh terms, must be effected within twelve months from the date of the passage of the act (that is, July 7, 1888), otherwise the President was directed to begin foreclosure proceedings under the Government lien. This latter would have meant the wiping out of the junior equities. Nothing remained but to try to avert this unfortunate contingency, and a method has now been

devised for meeting the requirements of the law, while placing th
prospects for the security holders on a very encouraging basis.

Several fortuitous circumstances have opportunely come in t
facilitate the operation, and to this must be ascribed the fact th
a task which but a short while back seemed impossible is now bein
confidently undertaken by a very shrewd and able syndicate o
1389 financiers. Traffic and revenues have very considerably in
creased during the last eighteen months, so there is a muc
larger basis of earnings to start with. Then the outlook for indu
trial interests is now altogether assuring, where previously it ha
been clouded by many uncertainties. Furthermore, the rate of in
terest in this country has been steadily declining, so that money ca
be borrowed on lower and more advantageous terms than a sho
time back. Of the two new issues of bonds provided under the re
organization, one bears only 4 per cent interest, the other but 3
per cent. The old bonds carried 5 to 6 per cent interest. Th
the saving to be effected in annual charges in this way is importan
Then it must also be remembered that the Central Pacific has hel
large corporate sinking funds, and the assets in these funds cou
as an important offset to the increased obligations incurred in th
settlement of the Government claim. A statement in the reorganiz
tion plan shows that the securities in these sinking funds, and whic
are to be deposited as part security for the new 3½ per cents, aggr
gate $12,553,000 and yield a present annual income of $689,680.

The reorganization scheme is in many respects a clever an
1390 ingenious contrivance. The payments to the Government a
arranged in exact accordance with the new law. And here
little study will show that our lawmakers, in their desire to be seve
and give no quarter, have overreached themselves. The law pr
vides that in any settlement in the "final payment" and "full di
charge" of the indebtedness "shall not be postponed to exceed t
years, and the whole amount, principal and interest, shall be pa
in equal semiannual installments within the period so limited." I
compliance with these provisions, the agreement with the Gover
ment provides for the payment of the debt in twenty equal se
annual installments. The payments are to be evidenced by twen
notes of the railroad company, falling due one every six mont
beginning August 1, 1899, and these notes are to be secured by a
equal amount at face value of the new first refunding mortgage fo
per cent gold bonds. The ordinary way of settling would have be
to make a direct tender of the new bonds. The terms of the la
of Congress made that impossible, so notes had to be given inste
with the new bonds as security. But the notes bear only 3 per ce
interest, while the bonds bear 4 per cent. The result is a sa

of one per cent per annum to the company. Messrs. Speyer &
1891 Co. have agreed to purchase the $11,762,543 of these notes
earliest maturing; that, however, will still leave $47,050,172 of
notes in possession of the Government. Eventually these notes will
be replaced by the new refunding bonds, but in the meantime the
difference in interest will mean a saving to the company of $470,000
per year in the charges.

One other good result will follow, and in this sense the rigorous
terms of the law will prove a not unmixed evil. Had payment been
in bonds, the Government might have held them indefinitely and
thus retained its interest in the property, furnishing occasion for a
continuation of the meddlesome interference with the affairs of the
road on the part of Congress which has characterized its course in
the past. As it is, a definite limit is set to the time within which the
pecuniary concern of the United States may continue. After ten
years Government interest in the property will cease, and the United
States will be totally eliminated as a factor in the road's affairs.
Indeed, this may be said to be the situation from the start under
the new arrangement, for with the indebtedness placed on a fixed
basis the only concern the Government has is to see that the semi-
annual payments are met, and that, of course, by the arrange-
1892 ment is put beyond question.

The reorganization scheme provides, as already indicated,
for the taking up of all the existing bond issues of the Central Pacific
Company. These will be replaced by two general issues—(1) $100,-
000,000 of first refunding mortgage 4 per cent gold bonds, to run
not less than forty-five years, and (2) $25,000,000 of 3½ per cent
mortgage gold bonds, to run thirty years. The latter as a lien upon
the property and plant of the new company will be subordinate to
the first refunding mortgage bonds, but, on the other hand, will have
a prior lien upon the existing sinking-fund assets (amounting, as
stated above, to $12,553,000 in securities, besides a small amount of
cash), and also a lien upon the lands and the land notes covered by
the mortgage securing the present land bonds. The new company
will likewise issue $20,000,000 of 4 per cent cumulative preferred
stock, mainly for betterments and additions to the property, $5,000,000
being expressly reserved for this purpose, to be used at the rate of
not exceeding $200,000 per annum. This preferred stock will not be
sold, but will all be taken by the Southern Pacific Company, which
will issue and sell its collateral trust bonds against the same,
1893 bearing 4 per cent interest. Finally there will be $67,275,500
of new common stock, the same as at present. Under the terms
of the arrangement with the Southern Pacific the latter will guar-
antee both the new issues of Central Pacific bonds.

The fixed charges of the new company will be heavier than those of the old company. This follows from the fact that the payment to the United States is so large and includes such great arrearages of interest (the payment of $58,812,715 being more than double the original principal of the subsidy bonds issued in aid of the road and which amounted to only $27,855,680), which arrears of interest have now to be capitalized. Part of the additional burden falls on the Southern Pacific Company, which agrees to issue altogether $36,819,000 of the collateral trust bonds referred to above. But the charges on that account may be disregarded in considering the position of the new Central Pacific Company by itself. For the year ending June 30, 1898, the fixed charges were $4,269,905. The charges of the reorganized company, when the whole $100,000,000 of new 4s and $25,000,000 of 3½s have been issued, will be $4,875,000. For the present, however, there will be a saving of $470,000 in the way noted above on the notes issued to the Government, re-
1394 ducing the total of charges on the Central Pacific to $4,405,000 as against the $4,269,000 actually paid for the late year. The direct increase, therefore, will be comparatively small.

As against the $4,405,000 of charges which the new company will have to meet, the Central Pacific's net earnings from operations in the late year were $5,658,033. For the 10½ years ending last June the average of the net earnings was $4,893,259. In both cases this is independent of the income from the securities in the sinking funds, which, as we have seen, at present amounts to $689,680 per year. The position of the new company would thus appear to be entirely safe and secure. It would seem, too, that the inducement to the old bondholders to take the new securities offered them in exchange for their present obligations is strong. The terms vary for the different issues, larger or smaller proportions of the 4s and of 3½s being given in each case, depending upon the merits and position of the old security. But the old bondholders are not tied down to the terms of exchange. If they prefer, the reorganization syndicate will purchase their holdings for cash—offering for some issues par and accrued interest, for others 105 and interest, and for still
1395 others 109 and interest. Of the $100,000,000 of 4s, $47,036,000 will be retained against the 3 per cent notes given the Government, $51,253,500 will go in partial exchange for existing bonds, and $1,690,500 will be purchased by the syndicate to provide the cash requirements of the plan. Of the 3½ per cents, $13,695,000 will go in partial exchange for existing bonds and $11,305,000 will be purchased by the syndicate.

The cash requirements are put altogether at $21,420,100. Of this $11,762,543 represents the money needed to take up the first

semiannual notes given the Government and $9,657,556 represents the sum required for new equipment, improvements, and other purposes. To raise this large sum of money the syndicate purchases, besides the $1,690,500 of refunding 4s and $11,305,000 of new 3½s, the amount of $12,000,000 of the new Southern Pacific collateral trust bonds to be created. It is estimated that in this way upwards of $4,500,000 cash will be provided which will be immediately available for improvements.

We have stated above that one of the merits of the plan is that it provides a definite adjustment of the relations with the
1396 Southern Pacific as well as with the United States. This is accomplished by giving Southern Pacific stock in exchange for Central Pacific. The argument in opposition to Southern Pacific control of Central Pacific has always been that the former had an alternative route in its line via El Paso and that it was to its interest to favor this line at the expense of the Central Pacific route via Ogden. But as stockholders of the Southern Pacific it will be immaterial to the present shareholders of the Central Pacific which route is developed. They will have a proprietary interest in both, and all cause for complaint will be removed.

The proposition to the Central Pacific shareholders looks very attractive and certainly surpasses anything that was deemed probable by outsiders only a few months ago. If the shares had been called upon to pay an assessment of $20 or $25 a share, hardly anyone would have been surprised. Instead they are asked for a cash payment of only $2, and in return are given share for share of Southern Pacific stock and 25 per cent of collateral trust 4 per cents. As to the value of Southern Pacific stock, that company in the late year showed a surplus above charges and expenses of $4,122,602. Even after deducting $1,299,258 spent for betterments and additions, the
397 surplus was $2,823,344. The Central Pacific surplus for the same twelve months, to be added to this, was $1,561,464. But against the latter there is the increase in charges to be taken into account.

Central Pacific's own charges, we have seen, will be increased only $35,095. The interest on the collateral trust bonds of the Southern Pacific will, of course, be an entirely new charge. The plan, as already remarked, provides altogether for $36,819,000 of these bonds, but only $23,819,000 will be required at present—$16,819,000 being given to Central Pacific shareholders and $12,000,000 being sold to the syndicate. On this $28,819,000 of bonds the annual interest charge will be $1,152,760, but that will be offset by the $690,000 income (roughly) on the securities in the Central Pacific sinking funds, making a net increase of $462,760, which, added to the $135,095 increase in the Central Pacific's own charges, gives an aggregate augmentation in charges of $597,855. Deducting this from

the $1,561,464 surplus for the Central Pacific, as above, we h
$963,609 to be added to the Southern Pacific's own surplus
$2,823,344, making a total of $3,786,953; that is to say, the new char
when applied to last year's earnings show a surplus in
1398 sum of over 3¾ million dollars after the expenditure
1½ million dollars ($1,299,258 by the Southern Pacific
$162,250 by the Central Pacific) for betterments and additions.
course the aggregate of Southern Pacific stock will be increased.
present the total is $121,070,810; the amount issuable against Cen
Pacific shares will add $67,275,500, and $10,118,184 is issuable agai
the stocks of Southern Pacific proprietary roads not yet exchan
bringing the total up to $198,464,494.

1399 [3—Extract from the Commercial and Financial Chronicle, Februar
1899, volume 68, pages 378 and 379.]

Central Pacific R. R.—Southern Pacific Company—Readjustm
plan—Control of Stock—Guaranty.—Under date of Feb. 8, 1
Messrs. Speyer & Co. and their associates have prepared a
for the thorough readjustment of the finances of the Central Pa
R. R. Co. The plan contemplates the acquisition of a controll
interest in the stock by the Southern Pacific Co., and immedia
thereupon the guaranteeing by that company of the bonds of
new Central Pacific issues.

As stated last week, a settlement has been negotiated with
United States Government of its claim against the company,
agreement dated Feb. 1, 1899. The balance of the indebtedness
to the United States, as of Feb. 1, 1899, as therein stated, amoun
principal and interest, to $58,812,715.48, which is to be evide
by twenty 3 per cent notes of the Central Pacific R. R. Co. fal
due one every six months, beginning Aug. 1, 1899, to be secured
an equal amount of new first refunding mortgage 4s. Ma
Speyer & Co. have agreed to purchase $11,762,543 of said n
1400 earliest maturing, Aug. 1, 1899, to Feb. 1, 1901, so that
amount of said first refunding mortgage 4s to be retaine
collateral by the United States will be $47,056,000.

In order to create these new first refunding mortgage gold b
it is proposed promptly to readjust the financial affairs of the
road company, and for this purpose the following is now pro
gated. A syndicate has been formed to provide all the cash req
ments under the plan.

New securities.—The plan provides for the creation of the fol
ing new securities:

(1) Securities to be issued by present Central Pacific R. R. Comp
or its successor.

First refunding mortgage 4 per cent gold bonds, to run no
than forty-five years, to bear interest from Aug. 1, 1899, free of t

and to be secured by a mortgage upon all the railroads, terminals, and equipment now owned by the Central Pacific R. R. Co., covering about 1,349 miles of first track and about 365 miles of second track and sidings, or by deposit as collateral security therefor of at least 90 per cent of the present outstanding first mortgage bonds of the Central Pacific R. R. Co. of California, and the Western Pacific R. R. Co., and of at least 75 per cent of the aggregate
1401 of all the now outstanding bonds of the Central Pacific R. R. Co. and of all now outstanding bonds of the divisional companies by the consolidation whereof it was formed, including such first-mortgage bonds of the Central Pacific R. R. Co. of California and Western Pacific R. R. Co., said new bonds to be guaranteed by endorsement as to principal and interest by the Southern Pacific Company upon delivery to that company of the controlling interest in the stock of the Central Pacific, as below stated.

Total issue of bonds	$100,000,000
Of which to be retained by U. S. Government as collateral for 3 per cent notes	47,056,000
In partial exchange for existing bonds	51,253,500
Purchased by syndicate to provide cash requirements of plan	1,690,500

3½ per cent mortgage thirty-year gold bonds, to bear interest from Aug. 1, 1899, free of taxes, and to be secured by a second lien upon all the properties covered by the first refunding mortgage above mentioned, and also by deposit with the trustee as acquired of all securities and moneys held in any sinking fund of the Central Pacific R. R. Co., and by a trust deed upon all the lands now
1402 covered by the mortgage dated Oct. 1, 1870, said new bonds to be guaranteed by endorsement as to principal and interest by Southern Pacific Company upon delivery to that company of the controlling interest in the stock of the Central Pacific as below stipulated.

Total issue	$25,000,000
Of which in partial exchange for existing bonds	13,695,000
Purchased by syndicate to provide cash requirements of plan	11,305,000
Preferred stock, 4 per cent cumulative, to be delivered to the Southern Pacific Co. in consideration of the issue of an equal amount at par value of the Southern Pacific Company's 4 per cent gold bonds hereinafter mentioned	20,000,000
Of which to be delivered on completion of readjustment	12,000,000
Reserved to be delivered only to provide additional funds, if required, for the payment of said 3 per cent notes to the United States, and thereafter only for betterments and additions	3,000,000
Reserved to be delivered for improvements and additions at not exceeding $200,000 yearly	5,000,000
Common stock to be sold to syndicate and offered for sale to depositors of present common stock upon payment of $2 per share deposited	67,275,500

(2) Securities to be issued by Southern Pacific Company.

4 per cent collateral trust gold bonds bearing interest from A 1, 1899, free of taxes, and having fifty years to run (but subject redemption at any time, at the option of the Southern Pacific C at par and accrued interest, upon six months' notice). Said bo to be secured by a collateral trust mortgage covering all the n preferred stock issued and delivered, and also all the common st of the railroad company purchased by the Southern Pacific Co.

Total issue	$36,819,
Of which as part consideration for the common stock of the railroad company, being one-fourth of the par value thereof	16,819,
In consideration of new preferred stock of the railroad company as above stated ($3,000,000 reserved as stated in plan)	15,000,
Reserve for betterments or additions to the railroad company's properties at not exceeding $200,000 per annum, against the issue of an equal amount at par value of the new preferred stock	5,000,
Common stock, as part consideration for like amount of railroad company stock, if paying assessment of $2 per share	67,275,

Exchange of securities.—The basis of exchange is shown in t following table:

Existing bonds to be deposited.	Each $1,000 receives—			
	Cash.[1]	Ref'g 4s.	New 3½s.	Or[illegible]
Cent. Pac. R. R. Co. of Cal. 1st M., series A, $2,995,000	$33.33	$1,000	$50	[2]$1,
Series B, C, D, E, F, G, H, and I, $22,886,000.	29.17	1,000	50	[2]1,
West. Pac. R. R. Co. 1st M., series A and B, $2,735,000	35.00	1,000	50	[2]1,
Cent. Pac. R. R. (San Joaquin Valley Branch) 1st M., $6,080,000	50.00	1,000	75	[2]1,
Cent. Pac. R. R. land bonds, $2,134,000	41.67	500	700	[2]1,
Fifty-year 6s, $56,000	50.00	500	900	[2]1,
Fifty-year 5s, $10,245,000	41.67	500	800	[2]1,
Cal. & Oregon R. R. and Cent. Pac. R. R. 1st M., A and B, $10,340,000	29.17	1,000	200	[2]1,

1405 [1] Interest from the due dates of the last coupons matured prior to Feb. 1, 1 at the same rates, up to the date when the new bonds begin to bear inte namely, Aug. 1, 1899.
[2] Payable in New York, with accrued interest.

Existing stock, if deposited	Each $100—		
		Will receive—	
	If paying assess—	So. Pac. stock.	[illegible] Pa
Central Pacific stock, $67,275,500	$2.00	$100	

The London shareholders' committee, F. G. Banbury, Esq., chairman, representing a majority of the outstanding shares, has agreed to the purchase of said stock by the Southern Pacific Co. and has deposited the shares with the readjustment managers under the plan of readjustment.

Guaranty, when to be endorsed.—The Southern Pacific Company agrees that upon delivery to it of $12,000,000 of new preferred stock and at least 377,194 shares of the 672,755 shares of common stock of the railroad company, it will simultaneously guarantee unconditionally by endorsement the payment of the principal and interest of the first refunding mortgage 4 per cent gold bonds and of the 3½ per cent mortgage gold bonds.

Position of reorganized company.—A circular shows that
1406 under the plan the Central Pacific Company's fixed charges will aggregate $4,875,000. On the 4 percents held by the Government, however, there will be a saving of 1 per cent per annum until Feb. 1, 1901, or about $470,000 annually, while the Central Pacific sinking funds will earn about $695,000, making the net charges $3,710,000. The Southern Pacific charges will be increased by the interest on $28,819,000 new bonds, or $1,152,760, making the total net annual interest charge on account of the Central Pacific $4,862,760, as against $4,269,905 for the year ending June 30, 1898, or an increase of $592,855. Against this increase there was a surplus on the Central Pacific for the last year, after charging all betterments to earnings, of $1,561,463, and a surplus on the Southern Pacific of $2,823,344, a total of $4,384,807.

The Southern Pacific's present stock is $121,070,810; issuable against Central Pacific stock, $67,275,500; issuable against stocks of proprietary companies not yet exchanged, $10,118,184; making a total stock issue of $198,464,494. See further particulars in advertising columns.

"It thus appears that the fixed charges of the new company on completion of the readjustment will be well within the past net
1407 income of the property. It is estimated that under the readjustment upwards of $4,500,000 cash will be provided, which will be immediately available for improvements on the properties of the railroad company."

Deposits.—Participation under the plan of readjustment in any respect whatsoever is dependent upon the deposit of securities with Speyer & Co., of New York, the depositary, or their associates, within the required time. Bonds must carry all coupons maturing after Feb. 1, 1899.

To facilitate the carrying out of the plan, holders of certificates of deposit issued under bondholders' agreement dated Aug. 14, 1897,

representing Central Pacific first-mortgage bonds, series A, B, C
E, F, G, H, and I should present their certificates at the offices of
of the readjustment managers to be stamped as assenting to the p
Holders who do not withdraw their bonds prior to March 23
be held to have assented. Any holder desiring to accept cash ra
than the new securities must present his securities of deposit t
stamped accordingly on or before March 23, 1899.

Similarly, holders of certificates of deposit issued under b
holders' agreement dated Oct. 1, 1896, representing Central Pa
fifty-year 5 per cent mortgage bonds, due April 1, 1939, should
sent their certificates for stamping.

1408 Securities sold.—Speyer & Co. announce that, as syndi
managers, they have sold all of the new Central Pacific
Southern Pacific bonds which the syndicate agreed to take under
Central Pacific readjustment plan. Of the aforesaid bonds, $8,000,
of the $12,000,000 Southern Pacific collateral trust 4s were purcha
by Brown Brothers & Co. and F. S. Smithers & Co. (V. 68, p. 3
v. 67, p. 839, 844.)

1409 [4—Extract from the Commercial and Financial Chronicle, March 4, 1
volume 68, page 397.]

As expected, the Central Pacific readjustment is proving an
qualified success. This week the American shareholders, as rep
sented by the certificates of deposit of the Central Trust Compa
unanimously adopted a resolution expressing approval of the Spe
plan and directing the committee, of which Mr. August Belmont
chairman, to conclude an agreement and accept the plan on behalf
the shareholders. There have been few other undertakings of eq
magnitude where success has followed so quickly upon the heels
the official promulgation of the plan. Seldom, too, has such gener
satisfaction been expressed by all parties in interest. And it must
admitted that the terms offered are favorable beyond the most sa
guine expectations. When one considers how dubious the outlo
appeared only a short time ago one can but marvel at the comple
transformation which has been worked in the prospects of the co
pany and in the situation of the security holders. The problem to
met was a difficult one. In the case of all the other transcontinen
lines—the Northern Pacific, the Union Pacific, and the Atch

1410 son—security holders were called upon to make important sa
rifices. In each of these instances the shareholders w
obliged to pay heavy assessments. The Central Pacific shareholde
have not only escaped this, but they get what must be considered th
equivalent of a handsome bonus, on a cash payment of only two do

lars per share, while all the other securities have been equitably and fairly dealt with.

We risk nothing in saying that such results would have been entirely out of the question except for the fact that Mr. C. P. Huntington and the banking house of Speyer & Co. have both stood behind the security holders, determined to protect them and see that they were not allowed to suffer. Mr. Huntington has at times been as harshly criticized by certain of the shareholders as he has been by the political agitators and demagogues of California. Yet he has repeatedly made important sacrifices on behalf of the Central Pacific, and in assenting to the present plan of readjustment has given proof that he regards the interests of that property as identical with those of every other portion of his vast system. As for the house of Speyer & Co., they deserve great credit for the solicitude and care displayed in looking after the Central Pacific se-
1411 curity holders. To them also belongs the credit of having devised the plan. Few people appreciate the time and labor required not only in carrying out the financial requirements of an undertaking of this magnitude but in contriving and perfecting such a scheme on a basis which shall be at once just and in exact accordance with the requirements. We understand that the plan is the work of Mr. James Speyer, who for the last six or seven months has given all his time and attention to it. The scheme must be regarded as in every way a most clever contrivance. The problem to be solved was such as to call for the utmost skill and ingenuity and the exercise withal of great patience in the elaboration of the various details. Not only were there the security holders to provide for, but the large debt owing to the United States (swollen to more than double the original principal of the subsidy loan through unpaid arrearages of interest) had to be arranged and settled. Moreover, the settlement had to be in accordance with a rigid law of Congress. It required a special order of talent to deal with such a complex state of affairs. The plan meets the situation exactly, and it is difficult to see how the same happy results could have been attained in any other way.

1412 [5—Extract from the Commercial and Financial Chronicle, March 4, 1899, volume 68, page 427.]

Central Pacific R. R.—Southern Pacific Co.—Deposits without penalty limited to March 23—Majority of stock assents.—Speyer & Co. give notice that the time for further deposits of bonds and stock under the Central Pacific R. R. Co. readjustment has been limited to March 23, after which date deposits will be accepted, if at all, only

upon such terms and conditions as the bankers may impose. A ma-
jority of the stock has already been deposited.

At a meeting of the American holders of certificates of the Centra
Trust Co. issued in exchange for stock, held on Tuesday, a resolution
was unanimously adopted authorizing the New York stockholders'
committee, consisting of August Belmont, John G. Carlisle, and
George Coppell, to conclude an agreement and accept the plan of re-
adjustment. A similar resolution was adopted by the foreign stock-
holders several days ago in London. Holders of Central Trust
Company certificates are notified to exchange them on or before
March 23 for certificates of deposit issued under the plan of read-
justment.

1413 Cash payment must be made by April 6.—The cash payment
of $2 per share on shares of Central Pacific stock deposited
has been called, and must be made on or before April 6, 1899, at the
office of Messrs. Speyer & Co., 30 Broad Street, New York, or at the
offices of their agents in Europe.

1414 [6—Extract from the Commercial and Financial Chronicle, March 1
1899, volume 68, page 472.]

Central Pacific R. R.—Listed.—Of the company's $67,275,500 c
capital stock, 393,918 shares have been deposited under the plan o
readjustment, and Speyer & Co. engraved certificates of deposit
issued therefor have been listed on the New York Stock Exchange.
(V. 68, p. 427.)

1415 [7—Extract from the Commercial and Financial Chronicle, March 1
1899, volume 68, page 523.]

Central Pacific R. R.—Four notes paid.—According to the terms o
the recent settlement, four of the notes given to the Government we
paid at the Treasury Department March 10. The notes amounted t
$11,762,543. (See v. 68, p. 378; v. 68, p. 472.)

1416 [8—Extract from the Commercial and Financial Chronicle, April 1, 18
volume 68, page 617.]

Central Pacific R. R.—Southern Pacific Co.—Plan operative.
Further deposits to be received till April 6.—A large majority o
each class of bonds and over 97½ per cent of the stock of the Centra
Pacific having assented to the plan and agreement for the readjus
ment of the company, dated Feb. 8, 1899, the readjustment manage
give notice that the said plan is declared operative. The time f

further deposits of stock and bonds, without additional charge, has been extended to and including April 6, 1899, after which date deposits will be accepted only upon a cash payment of one per cent of the par value of bonds, and an additional cash payment of $1 per share of stock deposited.

As to the Central Pacific first-mortgage bonds, series A, B, C, D, E, F, G, H, and I, holders of certificates of deposit issued under bondholders' agreement, dated Aug. 14, 1897, are notified that in order to accelerate the carrying out of the plan holders should present their certificates promptly at the offices of the readjustment managers to be stamped as assenting to the plan of readjust-
1417 ment. Any holder desiring to accept cash for his bond rather than the new securities as provided in the plan must present his certificate of deposit to be stamped accordingly on or before April 6, 1899. See advertisement in another column. (V. 68, p. 523.)

Listed.—The New York Stock Exchange has listed the engraved certificates issued by Speyer & Co. for the following securities:

$2,196,000 Western Pacific R. R. first-mortgage bonds, series A and B; $9,152,000 California & Oregon R. R. first-mortgage bonds, series A and B; $5,156,000 Central Pacific R. R., San Joaquin Valley Branch, first-mortgage bonds; and $1,703,000 Central Pacific Ry. land bonds. The amount of bonds on the list is to be reduced accordingly, and the committee on stock list is empowered to add to the list additional certificates as officially notified that they have been issued in accordance with the plan.

1418 [9—Extract from the Commercial and Financial Chronicle, April 15, 1899, volume 68, pages 721 and 722.]

Central Pacific R. R.—Securities mostly assented—Penalty.—Speyer & Co. announce that over 91 per cent of the bonds and 99 per cent of the stock have been deposited under the plan of readjustment, dated February 8. Further deposits will be accepted upon a cash payment of 1 per cent of the par value of bonds and an additional cash payment of $1 per share of stock deposited until April 29, after which date no deposits will be accepted except in their discretion and upon such terms and additional payments as may be imposed. (V. 68, p. 617.)

1419 [10—Extract from the Commercial and Financial Chronicle, Investors' Supplement for April, 1899, volume 68, page 24.]

Central Pacific R. R.—(See map of Southern Pacific.)

Road:

Lines owned—

	Miles.
San Francisco, Cal., to near Ogden, Utah	872
Lathrop, Cal., to Goshen, Cal	146
Roseville Junction, Cal., to Oregon State line	256
Branches to San Jose, etc	76
Trackage—	
Northern Ry., main line	6
Union Pacific into Ogden	1
Total	1,36

Readjustment plan.—The plan issued by Speyer & Co. and associates in Feb., 1899, and published in v. 68, p. 378, provides for the acquisition of the stock by the Southern Pacific Co. and the guaranteeing by that company of the principal and interest of two new Cent. Pac. loans shown above. The present indebtedness, including the U. S. Government loan (the latter amounting, with interest, on Feb. 1, 1899, to $59,812,714), will be discharged and the future needs of the property provided for by the following new securities
1420 shown in the table above, viz:

(1) Common stock, $67,275,500, to be sold to syndicate and offered for sale to depositors of present common stock upon payment of $2 per share deposited.

(2) Preferred stock, 4 per cent cumulative, authorized issue $20,000,000, to be delivered to Southern Pacific Co. in consideration of issue of equal amount at par value of the Southern Pacific Company's 4 per cent gold bonds; of which to be delivered on completion of readjustment, $12,000,000; reserved to be delivered only to provide additional funds, if required, for the payment of 3 per cent notes to the United States, and thereafter only for betterments and additions, $3,000,000; reserved to be delivered for improvements and additions at not exceeding $200,000 yearly, $5,000,000.

(3) First refunding M. gold 4s, $100,000,000, and to be secured by all the railroads, terminals, and equipment now owned, including about 1,349 miles of first track, etc., or by deposit as collateral security of at least 90 per cent of the present outstanding first-mortgage bonds of the Cent. Pac. R. R. Co. of California and the West. Pac. R. R. Co., and at least 75 p. c. of all the now outstanding bonds of the Central Pacific R. R. Co. and merged companies; of which

1421 to be retained by United States as collateral for 3 per cent notes, $47,056,000; in partial exchange for existing bonds, $51,253,500; purchased by syndicate to provide cash requirements of plan, $1,690,500.

(4) Thirty-year gold 3½s, $25,000,000, to be secured by a second lien upon all the properties covered by the 1st ref. mortgage, and also by deposit with the trustees as acquired of all securities and moneys held in any sinking fund of the Central Pacific R. R., consisting Jan. 1, 1899, of $12,553,000 in securities and $86,459 cash, and by a trust deed upon all the lands now covered by the mortgage dated Oct. 1, 1870; of which in partial exchange for existing bonds, $13,695,000; purchased by syndicate to provide cash requirements of plan, $11,305,000.

(5) Twenty three per cent notes, aggregating $58,812,714, issued to the Government in settlement of subsidy debt; $11,762,543 paid, leaving $47,056,000 to mature, $2,940,635 half yearly Aug., 1901, to Feb., 1909. First refunding 4s are deposited to retire the notes as they fall due.

The Southern Pacific Co. will acquire the stock of the Cent. Pacific R. R., issuing its own stock for $67,275,500 as part considera-
1422 tion, and also $36,819,000 collateral 50-year gold 4s, secured by a collateral trust mortgage covering all the new Cent. Pac. preferred and common stock acquired. See statement for Southern Pacific Co. In March, 1899, a large majority of each class of bonds and over 97½ per cent of the stock had assented to the plan, which was thereupon declared operative. (V. 68, p. 617.)

Exchange of securities.—The basis of exchange is as follows:

Existing bonds to be deposited.	Each $1,000 receives—			
	Cash.[1]	Ref'g. 4s.	New 3½s.	Or all cash.
ent. Pac. R. R. Co. 1st M. "A"	$33.33	$1,000	$50	[2] $1,000
eries B, C, D, E, F, G, H, and I	29.17	1,000	50	[2] 1,000
'est. Pac. R. R. 1st M., A and B	35.00	1,000	50	[2] 1,000
an Joaquin Valley Branch, 1st M	50.00	1,000	75	[2] 1,000
and bonds	41.67	500	700	[2] 1,000
ifty-year 6s	50.00	500	900	[2] 1,050
ifty-year 5s	41.67	500	800	[2] 1,050
il. & Or. and Cen. Pac. R. R. 1st M	29.17	1,000	200	[2] 1,090

[1] Interest from the due dates of the last coupons matured prior to Feb. 1, 1899, at the same rates up to the date when the new bonds begin to bear interest, namely, Aug. 1, 1899.
[2] Payable in New York, with accrued interest.

The old common, on payment of $2 per $100 share, will receive par Southern Pacific stock and 25 per cent in So. Pac. coll. trust 4s.

Status of new company.—The fixed charges will aggregate $4,875,-0; on the 4s held by the Government the saving of 1 per cent per

annum until Feb. 1, 1901, or about $470,000, while the sinking fund will earn about $695,000, making net charges $3,710,000. See also Southern Pacific Co.

Land grant.—Total land grant was about 12,000,000 acres, of which about 2,840,000 acres had been sold to December 31, 1894. Sales in 1896, 38,644 acres; cancellations, 17,979 acres; sales, Jan. 1, 1897, to June 30, 1898, 52,582 acres; cancellations, 216,116 acres. Land contracts on hand July 1, 1898—uncompleted payments, $158,734; principal of deferred payments, $553,612; and interest do., $558,224.

Earnings, 8 months, July 1 to Feb. 28—

1898–9—	
Gross	$10,713,03
Net	3,940,71
1897–8—	
Gross	10,472,06
Net	4,604,02

1424 Annual report.—Fiscal year (since 1896) ends June 30. Abstract of report for year ending June 30, 1898, was given in v. 67, p. 1157, 1163, showing gross $15,766,349, net $6,544,67 against gross $12,639,711 and net $4,990,812 in 1896–97. For the calendar years—

Gross earnings year ending Dec. 31—

1896	$12,527,08
1895	13,045,65
1894	13,118,24

—v. 68, p. 329, 378, 427, 472, 523, 617, 721.

1425 [11—Extract from the Commercial and Financial Chronicle, Investors' Supplement for July, 1899, volume 69, page 24.]

Central Pacific R. R.—(See map of Southern Pacific.)

Road:

	Miles
Lines owned—	
San Francisco, Cal., to near Ogden, Utah	87
Lathrop, Cal., to Goshen, Cal	18
Roseville Junction, Cal., to Oregon State line	28
Branches to San Jose, etc	5
Trackage—	
Northern Ry., main line	4
Union Pacific into Ogden	1
Total	1,38

Readjustment plan.—The plan issued by Speyer & Co. and associates in Feb., 1899, and published in v. 68, p. 378, provides for the acquisition of the stock by the Southern Pacific Co. and the guaranteeing by that company of the principal and interest of the new Cent. Pac. loans shown above. The present indebtedness, including the U. S. Government loan (the latter amounting, with

interest, on Feb. 1, 1899, to $59,812,714), will be discharged and the future needs of the property provided for by new securities
1426 in the table above, viz:

(1) Common stock, $67,275,500.

(2) Preferred stock, 4 per cent cumulative, authorized issue $20,000,000, to be delivered to Southern Pacific Co. in consideration of issue of equal amount at par value of the Southern Pacific Company's 4 per cent gold bonds, of which to be delivered on completion of readjustment, $12,000,000; reserved to be delivered only to provide additional funds, if required, for the payment of 3 per cent notes to the United States, and thereafter only for betterments and additions, $3,000,000; reserved to be delivered for improvements and additions at not exceeding $200,000 yearly, $5,000,000.

(3) First refunding M. gold 4s, $100,000,000, and to be secured by all the railroads, terminals, and equipment now owned, including about 1,349 miles of first track, etc., or by deposit as collateral security of at least 90 per cent of the present outstanding first-mortgage bonds of the Cent. Pac. R. R. Co. of California and the West. Pac. R. R. Co., and at least 75 p. c. of all the now outstanding bonds of the Central Pacific R. R. Co. and merged companies, of which to be retained by United States as collateral for 3 per cent notes, $47,056,000; in partial exchange for existing bonds,
1427 $51,253,500 purchased by syndicate to provide cash requirements of plan, $1,690,500.

(4) Thirty-year gold 3½s, $25,000,000, to be secured by a second lien upon all the properties covered by the 1st ref. mortgage and also by deposit with the trustees as acquired of all securities and moneys held in any sinking fund of the Central Pacific R. R., consisting. Jan. 1, 1899, of $12,553,000 in securities and $86,459 cash, and by a trust deed upon all the lands now covered by the mortgage dated Oct. 1, 1870, of which in partial exchange for existing bonds $13,695,000; purchased by syndicate to provide cash requirements of plan, $11,305,000.

(5) Twenty three per cent notes, aggregating $58,812,714, issued to the Government in settlement of subsidy debt; $11,762,543 paid, leaving $47,056,000 to mature, $2,940,635 half-yearly Aug., 1901, to Feb., 1909. First refunding 4s are deposited to retire them when due.

The Southern Pacific Co. will acquire the stock of the Cent. Pacific R. R., issuing its own stock for $67,275,500 as part consideration, and also $36,819,000 collateral 50-year gold 4s, secured by a collateral trust mortgage covering all the new Cent. Pac. preferred and
1428 common stock acquired. See statement for Southern Pacific Co. In March, 1899, a large majority of each class of bonds and over 97½ per cent of the stock had assented to the plan, which was thereupon declared operative. (V. 68, p. 617.)

Terms of exchange.—

Existing bonds to be deposited.	Each $1,000 receives—			
	Cash.[1]	Refg. 4s.	New 3½s.	Or all c
Cent. Pac. R. R. Co. 1st M., "A".....	$33.33	$1,000	$50	[2] $1,
Series B, C, D, E, F, G, H, and I.....	29.17	1,000	50	[2] 1,
West. Pac. R. R. 1st M., A and B.....	35.00	1,000	50	[2] 1,
San Joaquin Valley Branch 1st M.....	50.00	1,000	75	[2] 1,
Land bonds.....	41.67	500	700	[2] 1,
Fifty-year 6s.....	50.00	500	900	[2] 1,
Fifty-year 5s.....	41.67	500	800	[2] 1,
Cal. & Or. and Cen. Pac. R. R. 1st M....	29.17	1,000	200	[2] 1,

[1] Interest from the due dates of the last coupons matured prior to Feb. 1, 1899, at the same rates up to date when the new bonds begin to bear interest, namely, Aug. 1, 1899.
[2] Payable in New York, with accrued interest.

1429 The old common, on payment of $2 per $100 share, w receive par in Southern Pacific stock and 25 per cent in S Pac. coll. trust 4s.

On June 30, 1899, suit was brought to foreclose series "A" fir mortgage bonds. (V. 69, p. 26.)

Status of new company.—The fixed charges will aggregate $ 875,000; on the 4s held by the Government the saving of 1 p cent per annum until Feb. 1, 1901, or about $470,000, while the sin ing funds will earn about $695,000, making net charges $3,710,000.

Land grant.—Total land grant was about 12,000,000 acres, which about 2,840,000 acres had been sold to December 31, 18 Sales in 1896, 38,644 acres; cancellations, 17,979 acres. Land co tracts on hand July 1, 1898—uncompleted payments, $158,73 principal of deferred payments, $553,612; and interest do., $558,22

Earnings, 11 months, July 1 to May 31—

1898–9—	
Gross	$14,897,3
Net	5,647,4
1897–8—	
Gross	14,420,5
Net	6,157,2

Annual report.—Fiscal year (since 1896) ends June 30. Abstra of report for year ending June 30, 1898, was given in v. 6

1430 p. 1157, 1163, showing gross $15,766,349, net $6,544,679, agains gross $12,639,711 and net $4,990,812 in 1896–97. For the ca endar years—

Gross earnings year ending Dec. 31—

1896	$12,527,0
1895	13,045,6
1894	13,118,2

—v. 68, p. 329, 378, 427, 472, 523, 617, 721; v. 69, p.

1431 [12—Extract from the Commercial and Financial Chronicle, August 5, 1899, volume 69, page 282.]

Central Pacific Railway—Successor company.—This company has been incorporated in Utah, with a capital stock of $87,275,500 (of which $20,000,000 preferred), as successor of the old Central Pacific Railroad under the plan of reorganization. (V. 69, p. 26.)

1432 [13—Extract from the Commercial and Financial Chronicle, September 23, 1899, volume 69, page 645.]

Central Pacific R. R.—Reorganization notice.—Of the total capital stock of $67,275,500, $66,960,300 has been deposited under the plan of readjustment dated February 8, 1899. Holders who have not yet deposited their stock may do so prior to Oct. 4, on payment of $5 per share penalty in addition to the assessment of $2 per share. See advertisement on another page. (V. 69, p. 282.)

1433 [14—Extract from the Comercial and Financial Chronicle, Investors' Supplement for October, 1899, volume 69, page 22.]

Central Pacific Ry.—(See map of Southern Pacific.)

Lines owned:	Miles.
San Francisco, Cal., to near Ogden, Utah	871
Lathrop, Cal., to Goshen, Cal	146
Roseville Junction, Cal., to Oregon State line	296
Branches to San Jose, etc	35
Trackage:	
Northern Ry., main line	6
Union Pacific into Ogden	5
Total	1,359

Organization.—Incorporated in Utah in July, 1899, as successor of the railroad under the plan of readjustment in v. 68, p. 378, by which plan the Southern Pacific acquired the entire capital stock and guaranteed the principal and interest of the two new Central Pacific bond issues shown above. The old indebtedness, including the U. S. Government loan, excepting about $1,600,000 bonds, largely soon to mature, has been discharged. The new securities are:

(1) Common stock, $67,275,500, all held by So. Pac. Co.

1434 (2) Preferred stock, 4 per cent cumulative, authorized issue $20,000,000, delivered to Southern Pacific Co. in consideration of issue of equal amount at par value of the Southern Pacific Company's 4 per cent gold bonds; of which delivered on completion of readjustment, $12,000,000; reserved to be delivered only to provide additional funds if required for the payment of 3 per cent notes to the United States, and thereafter only for betterments and additions $3,000,000; reserved to be delivered for improvements and additions at not exceeding $200,000 yearly, $5,000,000.

(3) First refunding M. gold 4s, $100,000,000, and secured by a the railroads, terminals, and equipment now owned, including abo 1,349 miles of first track, etc., or by deposit as collateral security at least 90 per cent of the present outstanding first mortgage bonds the Cent. Pac. R. R. Co. of California and the West. Pac. R. R. C and at least 75 p. c. of all the now outstanding bonds of the Centr Pacific R. R. Co. and merged companies; of which retained by Unit States as collateral for 3 p. c. notes, $47,056,000 issued; in parti exchange for existing bonds, $51,253,500 purchased by syndicate provide cash requirements of plan, $1,690,500. See Abstract, v. 6 p. 808.

1435 (4) Thirty-year gold 3 1/2s, $25,000,000, secured by a se ond lien upon all the properties covered by the 1st ref. mor gage, and also by deposit with the trustees as acquired of all s curities and moneys held in any sinking fund of the Central Pacif R. R., consisting Jan. 1, 1899, of $12,553,000 in securities an $86,459 cash, and by a trust deed upon all the lands now cover by the mortgage dated Oct. 1, 1870; of which in partial exchang for existing bonds, $13,695,000; purchased by syndicate to provid cash requirements of plan, $11,305,000. See Mortgage Abstract, 69, p. 858; also see p. 851.

(5) Twenty three per cent notes, aggregating $58,812,714, issue to the Government in settlement of subsidy debt; $11,762,543 pai leaving $47,056,000 to mature, $2,940,635 half-yearly Aug., 190 to Feb., 1909. First refunding 4s are deposited to retire them wh due.

The Southern Pacific Co. has acquired the stock of the Cent. P cific R. R., issuing its own stock for $67,275,500 as part consider tion, and also $36,819,000 collateral 50-year gold 4s, secured by collateral trust mortgage covering all the new Cent. Pac. preferr and common stock acquired. See statement for Southern P cific Co.

1436 Terms of exchange.—

Existing bonds to be deposited.	Each $1,000 receives—			
	Cash.[1]	Refg. 4s.	New 3 1/2s.	Or all cash
Cent. Pac. R. R. Co. 1st M. "A"	$33. 33	$1, 000	$50	[2] $1,
Series B, C, D, E, F, G, H, and I	29. 17	1, 000	50	[2] 1,
West. Pac. R. R. 1st M., A and B	35. 00	1, 000	50	[2] 1,
San Joaquin Valley Branch 1st M	50. 00	1, 000	75	[2] 1,
Land bonds	41. 67	500	700	[2] 1,
Fifty-year 6s	50. 00	500	900	[2] 1,
Fifty-year 5s	41. 67	500	800	[2] 1,
Cal. & Or. and Cen. Pac. R. R. 1st M	29. 17	1, 000	200	[2] 1,

[1] Interest from the due dates of the last coupons matured prior to Feb. 1, 1899, at the same rates up to date when the new bonds begin to bear interest, namely Aug. 1, 1899.
[2] Payable in New York, with accrued interest.

The old common, on payment of $2 per $100 share, will receive par in Southern Pacific stock and 25 per cent in So. Pac. coll. trust 4s.

Status of new company.—The fixed charges will aggregate
1437 $4,875,000; on the 4s held by the Government the saving of 1 per cent per annum until Feb. 1, 1901, or about $470,000, while the sinking funds will earn about $695,000, making net charges $3,710,000.

Land grant.—Total land grant was about 12,000,000 acres, of which about 2,840,000 acres had been sold to December 31, 1894. Sales in 1896, 38,644 acres; cancellations, 17,979 acres. Land contracts on hand July 1, 1898—uncompleted payments, $158,734; principal of deferred payments, $553,612; and interest do., $558,224.

Earnings, 2 months, July 1 to Aug. 31—

1899—	
Gross	$3,490,610
Net	1,628,476
1898—	
Gross	2,756,142
Net	1,140,057

Annual report.—Fiscal year (since 1896) ends June 30. In 1898–99 gross, $16,401,028; net, $6,362,381. Abstract of report for year ending June 30, 1898, was given in v. 67, p. 1157, 1163, showing gross $15,766,349, net $6,544,679. For the calendar years—

Gross earnings year ending Dec. 31—

1896	$12,527,084
1895	13,045,657
1894	13,118,245

—v. 68, p. 523, 617, 721; v. 69, p. 26, 282, 645, 646, 794, 851.

1438 DEFENDANTS' EXHIBIT No. 96, APRIL 24, 1915.

In the Circuit Court of the United States, Ninth Circuit, Southern District of California.

To the judges of the United States Circuit Court, Southern District of California:

The United States of America, by direction of the Attorney General thereof, represented by George J. Denis, United States attorney, and Joseph H. Call, special attorney, bring this, their petition in equity, against the Southern Pacific Company, a corporation organized and existing under and by virtue of the laws of the State of Kentucky; the Southern Pacific Railroad Company, a corporation organized and existing under and by virtue of the laws of the State of California and of the United States; the Southern Pacific Railroad

Company, a corporation organized and existing under and by virtue of the laws of the Territory of Arizona; the Southern Pacific Railroad Company, a corporation organized and existing under and by virtue of the laws of the Territory of New Mexico; the Galveston, Harrisburg and San Antonio Railway Company, a corporation
1439 organized and existing under and by virtue of the laws of the State of Texas; the Texas and New Orleans Railroad Company of 1874, a corporation organized and existing under and by virtue of the laws of the State of Texas; the Louisiana Western Railroad Company, a corporation organized and existing under and by virtue of the laws of the State of Louisiana; Morgan's Louisiana and Texas Railroad and Steamship Company, a corporation organized and existing under and by virtue of the laws of the State of Louisiana; the Mexican International Railroad Company, a corporation organized and existing under and by virtue of the laws of the State of Connecticut; the Southern Pacific Railroad Company, a corporation pretending to be organized in the year 1888 under and by virtue of the laws of the State of California; the San Jose and Almeda Railroad Company, a corporation; the Pajara and Santa Cruz Railroad Company, a corporation; the Monterey Railroad Company, a corporation; the Monterey Extension Railroad Company, a corporation; the Southern Pacific Branch Railway Company, a corporation; the San Pablo and Tulare Railroad Company, a corporation; the San Pablo and Tulare Extension Railroad Company, a corporation; the San Ramon Valley Railroad Company, a corporation; the Stockton and Copperopolis Railroad Company, a corporation;
1440 the Stockton and Tulare Railroad Company, a corporation; the San Joaquin Valley and Yosemite Railroad Company, a corporation; the Los Angeles and San Diego Railroad Company, a corporation; the Los Angeles and Independence Railroad Company, a corporation; the Long Beach, Whittier and Los Angeles County Railroad Company, a corporation; the Long Beach Railroad Company, a corporation; the Southern Pacific Railroad Extension Company, a corporation; the Ramona and San Bernardino Railroad Company, a corporation, each organized under and by virtue of the laws of the State of California; the Texas and Pacific Railway Company, a corporation; the Central Pacific Railroad Company, a corporation organized under the laws of the State of California and of the United States; the California and Oregon Railroad Company, a corporation organized and existing under and by virtue of the laws of the State of California and of the United States; the Oregon Central Railroad Company, a corporation organized and existing under and by virtue of the laws of the State of Oregon and of the United States; the Pacific Mail Steamship Company, a corporation; the Pacific Improvement Company, a corporation organized and existing under and

by virtue of the laws of the State of California; the Central
1441 Trust Company of New York, a corporation organized and existing under and by virtue of the laws of the State of New York; the Pacific Mail Steamship Company, a corporation; Collis P. Huntington, a citizen and resident of the State of California; Charles F. Crocker, a resident and citizen of the State of California; Edwin F. Sealres, a citizen and resident of the State of Massachusetts; Mrs. Leland Stanford, a citizen and resident of the State of California; Mrs. Leland Stanford, as executrix of the last will and testament of Leland Stanford, deceased, a citizen and resident of the State of California; Stillman, a citizen and resident of ; Hubbard, a citizen and resident of ; A. N. Towne, a citizen and resident of the State of California; J. A. Fillmore, a citizen and resident of the State of California; D. O. Mills, Lloyd Tevis, and Geritt L. Lansing, trustees, each a resident of and citizen of the State of California; T. H. Goodman, a citizen and resident of the State of California; John A. Muir, a citizen of the State of California, residing within the southern district of Californa; and D. Burkhalter, a citizen of the State of California, residing within the southern district of California.

1442 And thereupon your orators allege and show unto the court: That each of the railroad companies and transportation companies above named now are, and at all the times hereinafter named have been, engaged in carrying passengers, property, and commerce between and among the States of the United States and between and among the States and Territories of the United States, and between and among the United States and foreign countries.

And your orators further allege that the railroad and transportation companies above named severally own and operate lines of standard-guage railroad, which are all connected with each other, which when taken together, form a continuous line from Portland, Oregon, by way of San Francisco and Los Angeles, in the State of California, Yuma, in the Territory of Arizona, and El Paso, in the State of Texas, to New Orleans, in the State of Louisiana, with connecting lines from Ogden, Utah, to San Francisco, California, from El Paso, Texas, to Santa Rosalia, Mexico, from Houston, Texas, to Galveston, Texas, from Houston, Texas, to Albany, Texas, and to the cities of Denison and Paris, and from Los Angeles, Cali-
1443 fornia, to San Pedro, Santa Monica, and Ellwood, California, and from San Francisco to Calistoga, Santa Rosa, Rumsey, Oroville, Placerville, Ione City, Valley Springs, Milton, Monterey, Santa Cruz, and to various other points and places.

And your orators further allege that said line of railroad from San Francisco, by way of Los Angeles, to Fort Yuma, upon the Colorado River, was constructed by the United States through the

agency of the Southern Pacific Railroad Company, by virtue of t acts of Congress of July 27, 1866 (14 Stats., 292), and of March 1871 (16 Stats., 573), for the purpose of securing the safe and spee transportation of the mails, troops, munitions of war, and publ stores of the United States over said line of railroad.

And your orators further allege that said line of railroad fro Ogden, Utah, to San Francisco, California, was likewise construct by the United States, through the agency of the Central Pacific Ra road Company, for like uses and purposes of the United States.

Your orators further allege that the line of railroad from the li between Oregon and California to San Francisco, California, w likewise constructed by the United States, through the agen
1444 of the California and Oregon Railroad Company, for li uses and purposes of the United States.

And your orators further allege that that part of the line of ra road constructed between the line between California and Oreg and Portland, Oregon, was constructed by the United States, throug the agency of the Oregon Central Railroad Company, for like us and purposes of the United States.

And your orators further allege that the defendants herein hav combined and conspired together, and with other persons and cor porations, whose names are unknown to your orators; but, when as certained, will be inserted as defendants herein, to restrain trade and commerce between and among the several States of the United State and between and among the States and Territories of the United States, and between and among the United States and foreign na tions.

And your orators further allege that, in furtherance of such com bination and conspiracy as aforesaid, the defendants have attempted to monopolize and have monopolized all the trade and commerce between San Francisco and other cities and places upon the Bay of San Francisco, in said State, by railroad, and other points and places within the United States outside of the State of California, and
1445 have attempted to monopolize, and have monopolized, a large part of the trade and commerce between and among the several States of the United States, and between and among the States and Territories of the United States, and between and among the United States and foreign nations, particularly that part of such trade and commerce by land and by sea between cities and towns in California, Nevada, Oregon, Arizona, New Mexico, and Texas, respectively, and other States and Territories of the United States.

And your orators further allege that, in furtherance of said com bination and conspiracy, and in fraud of the rights of the United States and of the public, the defendants herein have combined all of said lines of railroad and transportation under a single management

forming a monopoly of the trade and commerce thereof, by land and by sea between the points and places named as aforesaid.

And your orators further allege that, in furtherance of such combination and conspiracy, and in fraud of the rights of the United States and of the public, and without any authoritiy so to do, said Southern Pacific Company of Kentucky and the Southern Pacific Railroad Company of California, defendants, did, on the 10th
1446 day of February, 1885, enter into a certain contract or agreement, a copy of which is hereto annexed and made a part hereof and marked "Exhibit A," by which said Southern Pacific Railroad Company pretended to lease to said Southern Pacific Company, for the term of ninety-nine years, all of its railroad situated in the State of California, with all its branches, and all railroads leased to said Southern Pacific Railroad Company, together with all rolling stock, telegraph lines, tools, and property of every kind and nature.

And your orators further allege that, in furtherance of such combination and conspiracy, and in fraud of the rights of the United States and of the public, and without any authority so to do, said Southern Pacific Company of Kentucky and the Central Pacific Railroad Company, defendants, did, on the 17th day of February, 1885, enter into a certain contract or agreement, a copy of which is hereto annexed, made a part hereof, and marked "Exhibit B," by which said Central Pacific Railroad Company pretended to lease to said Southern Pacific Company for the term of ninety-nine years all of its railroad situated in the Territory of Utah and States of Nevada and California, known and designated as the Central Pacific Railroad, together with all the branches thereof, and together
1447 with all the rolling stock, telegraph lines, steamboats, wharves, piers, depots, workshops, and all other property, real and personal, owned, held, and possessed by said Central Pacific Railroad Company.

And your orators further allege that, in furtherance of said combination and conspiracy, and in fraud of the rights of the United States and of the public, and without any authority so to do, said Southern Pacific Railroad Company of California and the San Jose and Almaden Railroad Company, the Pajara and Santa Cruz Railroad Company, the Monterey Railroad Company, the Monterey Extension Railroad Company, the San Pablo and Tulare Railroad Company, the San Pablo Extension Railroad Company, the Southern Pacific Branch Railway Company, the San Ramon Valley Railroad Company, the Stockton and Copperopolis Railroad Company, the Stockton and Tulare Railroad Company, the San Joaquin Valley and Yosemite Railroad Company, the Los Angeles and San Diego Railroad Company, the Los Angeles and Independence Railroad Company, the Long Beach, Whittier and Los Angeles County Rail-

road Company, the Long Beach Railroad Company, the Southern Pacific Railroad Extension Company, and the Ramona and San Bernardino Railroad Company, on the 4th day of May, 1888,
1448 entered into a certain contract or agreement, a copy of which is hereto annexed, made a part hereof, and marked "Exhibit C," by which all of said railroad corporations agreed and pretended to amalgamate and consolidate their debts, properties, assets, and franchises, forming a new corporation, by the name and style of the Southern Pacific Railroad Company.

And your orators further allege that, in furtherance of said combination and conspiracy, and in fraud of the rights of the United States and of the public, and without any authority so to do, said Southern Pacific Railroad Company of California, incorporated in the year 1888 as aforesaid, did make, execute, and deliver to the defendant the Central Trust Company of New York a certain mortgage or deed of trust to secure the payment of thirty-eight millions ($38,000,000.00) of dollars of bonds proposed to be issued to said Central Trust Company as trustee, which said pretended mortgage or deed of trust has been recorded in all of the counties of the State of California through which said railroads and branches thereof pass, a copy of which said pretended mortgage or deed of trust is hereto annexed, made a part hereof, and marked "Exhibit D."

And your orators further allege that sometimes defend-
1449 ants herein pretend to have transferred a majority and controlling interest of the stock of said Southern Pacific Railroad Company, Southern Pacific Company of Kentucky, and other railroads mentioned as aforesaid to the Pacific Improvement Company, a defendant herein, in order to more effectually and conveniently carry out such combination and conspiracy in restraint of such trade and commerce and to create such monopoly thereof, but your orators allege that all such transfers of stock from one company to another is utterly void and of no effect.

And your orators further allege that sometimes defendants, in order to accomplish such combination and conspiracy in restraint of trade and commerce, pretend to have elected as boards of directors of said several railroad corporations and transportation companies above named the same persons appointed the board of directors of each such company, and such other persons as will carry out such combination and conspiracy without regard to the rights of the United States and of the public, and without regard to the rights of any of the stockholders of said companies; but your orators allege that all such acts and doings are illegal and void, and in fraud of the rights of the United States and of the public.

1450 Your orators hereby expressly reserve the right to question the corporate existence of any or all of said various rail-

road companies and transportation companies above named, in view of the unlawful acts of said companies and the violation and abuse of the charter powers of said companies.

To the end, therefore, that said defendants may, if they can, show why your orators should not be granted the relief herein sought, and that the matters herein alleged may be determined, and the rights of your orators enforced, your orators bring this suit and require each of the above-named corporations defendant herein to show, upon oath, to the best of their respective knowledge and information:

First. The original or copy of so much of the stock books or book of stockholders or other record of said respective compaines showing the names and residences of the owners and holders of the shares of capital stock of said respective companies, and the number of shares and amount now held by each such owner or holder.

1451 Second. The originals or copies of all contracts, leases, and agreements, of every kind and nature, between each of said companies and any other defendant herein, and between each of said companies and any other person or corporation relating to the operation or control or leasing or pooling of earnings of each such company or line of railroad of such company or any portion thereof.

And your orators further pray that said contract or lease between the Southern Pacific Company and the Southern Pacific Railroad Company, dated February 10, 1885, may be annulled and decreed to be void.

That the said agreement between the Southern Pacific Company of Kentucky and the Central Pacific Railroad Company, dated February 17, 1885, may be annulled and decreed to be void.

That the said pretended articles of amalgamation and consolidation between the Southern Pacific Railroad Company and seventeen other railroad corporations, dated May 4, 1888, may be annulled and decreed to be void.

1452 That the said pretended mortgage or deed of trust of the Southern Pacific Railroad Company to the Central Trust Company of New York may be annulled and decreed to be void.

And your orators further pray that all contracts, leases, agreements, and consolidations by and between the defendants and between each defendant railroad and transportation company and any other defendant railroad and transportation company, and between each defendant railroad and transportation company and any other railroad or transportation company, in anywise relating to the leasing, operation, or control of any thereof, may be annulled and decreed to be void.

And your orators further pray that all transfers of the shares of the capital stock of any of the corporations defendant herein to any other corporation defendant herein be annulled and decreed to be void.

And your orators further pray that by a proper decree of this court each of the railroad and transportation companies defendant herein be required henceforth, through its own corporate officers and employees, to maintain and operate, without favor or discrimination against any person, company, or corporation, or the United States, its said respective railroad or transportation line for railroad
1453 governmental, commercial, and other public purposes, and exercise, by itself alone, all of its respective duties required by its charter and by the laws of the United States and of the State of California.

And your orators further pray that the defendants herein and each of them, their servants, agents, and employees, be perpetually enjoined from in any way combining or conspiring together or with any other person or corporation to restrain trade or commerce between the States or with foreign nations.

And your orators allege and show unto the court that all of the defendants herein are necessary parties to this suit, and they pray that the court may order all of such defendants, whether they reside within this judicial district or not, may be summoned, and that subpœna may be issued to that end.

And may it please your honors to grant unto your orators all such other and further relief as the nature of the case may require and as may seem to your honors to be equitable, and for costs of this suit.

May it please your honors to grant unto your orators a writ of subpœna issuing out of and under the seal of this honorable
1454 court, directed to the Southern Pacific Company, a corporation organized and existing under and by virtue of the laws of the State of Kentucky; the Southern Pacific Railroad Company, a corporation organized and existing under and by virtue of the laws of the State of California and of the United States; the Southern Pacific Railroad Company, a corporation organized and existing under and by virtue of the laws of the Territory of Arizona; the Southern Pacific Railroad Company, a corporation organized and existing under and by virtue of the laws of the Territory of New Mexico; the Galveston, Harrisburg and San Antonio Railway Company, a corporation organized and existing under and by virtue of the laws of the State of Texas; the Texas and New Orleans Railroad Company of 1874, a corporation organized and existing under and by virtue of the laws of the State of Texas; the Louisiana Western Railroad Company, a corporation organized and existing under and by vir-

tue of the laws of the State of Louisiana; Morgan's Louisiana and Texas Railroad and Steamship Company, a corporation organized and existing under and by virtue of the laws of the State of Louisiana; the Mexican International Railroad Company, a corporation organized and existing under and by virtue of the laws of the State of Connecticut; the Southern Pacific Railroad Company, a
1455 corporation pretending to be organized in the year 1888 under and by virtue of the laws of the State of California; the San Jose and Almaden Railroad Company, a corporation, the Pajara and Santa Cruz Railroad Company, a corporation, the Monterey Railroad Company, a corporation, the Monterey Extension Railroad Company, a corporation, the Southern Pacific Branch Railway Company, a corporation, the San Pablo and Tulare Railroad Company, a corporation, the San Pablo and Tulare Extension Railroad Company, a corporation, the San Ramon Valley Railroad Company, a corporation, the Stockton and Copperopolis Railroad Company, a corporation, the Stockton and Tulare Railroad Company, a corporation, the San Joaquin Valley and Yosemite Railroad Company, a corporation, the Los Angeles and San Diego Railroad Company, a corporation, the Los Angeles and Independence Railroad Company, a corporation, the Long Beach, Whittier and Los Angeles County Railroad Company, a corporation, the Long Beach Railroad Company, a corporation, the Southern Pacific Railroad Extension Company, a corporation, the Ramona and San Bernardino Railroad Company, a corporation, each organized under and by virtue of the laws of the State of California; the Texas and Pacific Railway Company, a cor-
1456 poration; the Central Pacific Railroad Company, a corporation organized under the laws of the State of California and of the United States; the California and Oregon Railroad Company, a corporation organized and existing under and by virtue of the laws of the State of California and the United States; the Oregon Central Railroad Company, a corporation organized and existing under and by virtue of the laws of the State of Oregon and of the United States; the Pacific Mail Steamship Company, a corporation; the Pacific Improvement Company, a corporation organized and existing under and by virtue of the laws of the State of California; the Central Trust Company of New York, a corporation organized and existing under and by virtue of the laws of the State of New York; Collis P. Huntington, a citizen of and resident of the State of California; Charles F. Crocker, a resident and citizen of the State of California; Edwin F. Searles, a citizen and resident of the State of Massachusetts; Mrs. Leland Stanford, a citizen and resident of the State of California; Mrs. Leland Stanford as executrix of the last will and testament of Leland Stanford, deceased, a citizen and resident of the State of California; Thomas E. Stillman, a citizen and resi-

dent of State of New York; Thomas H. Hubbard, a citi
1457 and resident of State of New York; A. N. Towne, a citi
and resident of the State of California; J. A. Fillmore, a c
zen and resident of the State of California; D. O. Mills, Lloyd Te
and Geritt L. Lansing, trustees, each a resident and citizen of
State of California; T. H. Goodman, a citizen and resident of
State of California; John A. Muir, a citizen of the State of C
fornia, residing within the southern district of California; and
Burkhalter, a citizen of the State of California, residing within
southern district of California, commanding them, and every
them, on a certain day and under a certain penalty therein to
inserted, personally to be and to appear before your honors in t
honorable court, and then and there to answer all and singular
premises, and to stand to and perform and abide such further or
and decree therein as to your honors shall seem meet.

Your orators expressly waive answer under oath of the ab
defendants, except as to the two interrogatories hereinbefore m
tioned required to be answered by the corporations defendant here
as to which two interrogatories answer is required upon oath.

RICHARD OLNEY,
Attorney General United State
1458 GEORGE J. DENIS,
United States Attorney So. Dist. of California
JOSEPH H. CALL,
Special U. S. Atty.

Upon reading the foregoing petition in equity of the United Stat
and duly considering the same, and it appearing to the court that
of the defendants named in said petition are necessary parties to sa
suit, it is ordered by the court that subpœnas, issued under the se
of this court, be issued, directed to each of said defendants, whi
shall be served wherever said defendants may be found within th
jurisdiction of the United States.

July 16th, 1894.

E. M. Ross,
Judge of the District Court and one of the Judges of the Unit
States Circuit Court for the Southern District of California.

* * * * * * *

1459 (Pursuant to stipulation at page 2556 of the testimony, th
following matter appearing at this point need not be copied a
a part of defendants' Exhibit No. 96:)

Lease dated February 10, 1885, of the Central Pacific Railroa
Company and others to the Southern Pacific Company.

Lease dated February 17, 1885, of the Central Pacific Railroa
Company to the Southern Pacific Company.

Articles of association, incorporation, amalgamation, and consolidation of the Southern Pacific Railroad Company, dated May 4, 1888.

Indenture dated August 25, 1888, between the Southern Pacific Railroad Company, the Southern Pacific Company, and the Central Trust Company of New York.

* * * * * * *

1460 At a stated term, to wit, the January term, A. D. 1894, of the Circuit Court of the United States of America, of the Ninth Judicial Circuit, in and for the Southern District of California, held at the court room in the city of Los Angeles, on Saturday, the fourth day of August, in the year of our Lord one thousand eight hundred and ninety-four.

Present: The Honorable Erskine M. Ross, district judge.

United States, complainant, vs. Southern Pacific Company et al., defendants. No. 609.

In open court, this 4th day of August, 1894, it having been made to appear to the court that the Attorney General of the United States has directed the dismissal of the above-entitled suit without prejudice, and Mr. George J. Denis, United States attorney, and Mr. Joseph H. Call, special assistant United States attorney, having presented such matter to the court, and, in pursuance of such direction of the
1461 Attorney General, moved for such dismissal, it is therefore ordered by the court that the petition in equity in the above-entitled suit be, and the same is hereby, dismissed without prejudice.

In the Circuit Court of the United States, Ninth Judicial Circuit, Southern District of California. No. 609.

The United States of America, complainants, vs. The Southern Pacific Company, a corporation organized and existing under and by virtue of the laws of the State of Kentucky; the Southern Pacific Railroad Company, a corporation organized and existing under and by virtue of the laws of the State of California
1462 and of the United States; the Southern Pacific Railroad Company, a corporation organized and existing under and by virtue of the laws of the Territory of Arizona; the Southern Pacific Railroad Company, a corporation organized and existing under and by virtue of the laws of the Territory of New Mexico; the Galveston, Harrisburg and San Antonio Railway Company, a corporation organized and existing under and by virtue of the laws of the State of Texas; the Texas and New Orleans Railroad Company of 1874, a corporation organized and existing under and by

virtue of the laws of the State of Texas; the Louisiana Weste
Railroad Company, a corporation organized and existing und
and by virtue of the laws of the State of Louisiana; Morgan
Louisiana and Texas Railroad and Steamship Company, a corp
ration organized and existing under and by virtue of the laws
the State of Louisiana; the Mexican International Railro
1463 Company, a corporation organized and existing under an
by virtue of the laws of the State of Connecticut; the South
ern Pacific Railroad Company, a corporation pretending to
organized in the year 1888 under and by virtue of the laws of th
State of California; the San Jose and Almaden Railroad Co
pany, a corporation; the Pajara and Santa Cruz Railroad Co
pany, a corporation; the Monterey Railroad Company, a corpor
tion; the Monterey Extension Railroad Company, a corporatio
the Southern Pacific Branch Railway Company, a corporatio
the San Pablo and Tulare Railroad Company, a corporation; th
San Pablo and Tulare Extension Railroad Company, a corpor
tion; the San Ramon Valley Railroad Company, a corporatio
the Stockton and Copperopolis Railroad Company, a corporatio
the Stockton and Tulare Railroad Company, a corporation; th
San Joaquin Valley and Yosemite Railroad Company, a corpor
tion; the Los Angeles and San Diego Railroad Company,
1464 corporation; the Los Angeles and Independence Railro
Company, a corporation; the Long Beach, Whittier and L
Angeles County Railroad Company, a corporation; the Long Bea
Railroad Company, a corporation; the Southern Pacific Railro
Extension Company, a corporation; the Ramona and San Be
nardino Railroad Company, a corporation; each organized und
and by virtue of the laws of the State of California; the Texas an
Pacific Railway Company, a corporation; the Central Pacific Rai
road Company, a corporation organized under the laws of th
State of California and of the United States; the California an
Oregon Railroad Company, a corporation organized and existi
under and by virtue of the laws of the State of California and o
the United States; the Oregon Central Railroad Company, a co
poration organized and existing under and by virtue of the la
of the State of Oregon and of the United States; the Pacif
Mail Steamship Company, a corporation; the Pacific Im
1465 provement Company, a corporation organized and existi
under and by virtue of the laws of the State of California
the Central Trust Company of New York, a corporation organiz
and existing under and by virtue of the laws of the State of Ne
York; Collis P. Huntington, a citizen and resident of the State
California; Charles F. Crocker, a resident and citizen of the Sta

of California; Edwin F. Searles, a citizen and resident of the State of Massachusetts; Mrs. Leland Stanford, a citizen and resident of the State of California; Mrs. Leland Stanford as executrix of the last will and testament of Leland Stanford, deceased, a citizen and resident of the State of California; Thomas E. Stillman, a citizen and resident of State of New York; Thomas H. Hubbard, a citizen and resident of State of New York; A. N. Towne, a citizen and resident of the State of California; J. A. Fillmore, a citizen and resident of the State of California; D. O. Mills,
1466 Lloyd Tevis, and Gerrit L. Lansing, trustees, each a resident of and citizen of the State of California; T. H. Goodman, a citizen and resident of the State of California; John A. Muir, a citizen of the State of California, residing within the southern district of California; and D. Burkhalter, a citizen of the State of California, residing within the southern district of California, defendants.

The complainants filed their petition in equity herein on the 16th day of July, 1894, which is hereto annexed.

On the 16th day of July, 1894, the court made and entered an order herein that subpœnas issued under the seal of this court be issued directed to each of said defendants, which shall be served wherever said defendants may be found within the jurisdiction of the United States, which order annexed to said petition in equity is hereto annexed.

A subpœna to appear and answer in said cause directed to
1467 all of the defendants was thereafter, on the 17th day of July, 1894, issued returnable on the 3rd day of September, A. D. 1894.

Six alias subpœnas to appear and answer in said cause, each directed to all of the defendants, were thereafter, on the 19th day of July, 1894, issued, returnable on the 3rd day of September.

On the 4th day of August, 1894, the court made and entered herein an order that complainants' petition in equity be dismissed without prejudice, and on said 4th day of August, 1894, a final decree of dismissal without prejudice was accordingly signed, filed, entered, and recorded herein and is hereto annexed.

1468 United States of America. Circuit Court of the United States. Ninth Judicial Circuit, Southern District of California. No. 609.

The United States of America, complainants, vs. The Southern Pacific Company, a corporation organized and existing under and by virtue of the laws of the State of Kentucky, the Southern Pacific

Railroad Company, a corporation organized and existing under
and by virtue of the laws of the State of California and
1469 of the United States, The Southern Pacific Railroad Com-
pany, a corporation organized and existing under and by
virtue of the laws of the Territory of Arizona; the Southern Pa-
cific Railroad Company, a corporation organized and existing
under and by virtue of the laws of the Territory of New Mexico;
the Galveston, Harrisburg and San Antonio Railway Company, a
corporation organized and existing under and by virtue of the
laws of the State of Texas; the Texas and New Orleans Railroad
Company, of 1874, a corporation organized and existing under
and by virtue of the laws of the State of Texas; the Louisiana
Western Railroad Company, a corporation organized and existing
under and by virtue of the laws of the State of Louisiana; Mor-
gan's Louisiana and Texas Railroad and Steamship Company, a
corporation organized and existing under and by virtue of the
laws of the State of Louisiana; the Mexican International
1470 Railroad Company, a corporation organized and existing un-
der and by virtue of the laws of the State of Connecticut; the
Southern Pacific Railroad Company, a corporation pretending to
be organized, in the year 1888, under and by virtue of the laws of
the State of California; the San Jose and Almaden Railroad
Company, a corporation; the Pajara and Santa Cruz Railroad
Company, a corporation; the Monterey Railroad Company, a cor-
poration; the Monterey Extension Railroad Company, a corpora-
tion; the Southern Pacific Branch Railway Company, a corpora-
tion; the San Pablo and Tulare Railroad Company, a corporation;
the San Pablo and Tulare Extension Railroad Company, a cor-
poration; the San Ramon Valley Railroad Company, a corporation;
the Stockton and Copperopolis Railroad Company, a corporation;
the Stockton and Tulare Railroad Company, a corporation; the San
Joaquin Valley and Yosemite Railroad Company, a corporation;
the Los Angeles and San Diego Railroad Company, a corpora-
1471 tion; the Los Angeles and Independence Railroad Company,
a corporation; the Long Beach, Whittier and Los Angeles
County Railroad Company, a corporation; the Long Beach Rail-
road Company, a corporation; the Southern Pacific Railroad Ex-
tension Company, a corporation; the Ramona and San Bernardino
Railroad Company, a corporation; each organized under and by
virtue of the laws of the State of California; the Texas and Pacific
Railway Company, a corporation; the Central Pacific Railroad
Company, a corporation, organized under the laws of the State
of California and of the United States; the California and Oregon

Railroad Company, a corporation organized and existing under and by virtue of the laws of the State of California and of the United States; the Oregon Central Railroad Company, a corporation organized and existing under and by virtue of the laws of the State of Oregon and of the United States; the Pacific Mail
1472 Steamship Company, a corporation; the Pacific Improvement Company, a corporation organized and existing under and by virtue of the laws of the State of California; the Central Trust Company of New York, a corporation organized and existing under and by virtue of the laws of the State of New York; Collis P. Huntington, a citizen and resident of the State of California; Charles F. Crocker, a resident and citizen of the State of California; Edwin F. Searles, a citizen and resident of the State of Massachusetts; Mrs. Leland Stanford, a citizen and resident of the State of California; Mrs. Leland Stanford as executrix of the last will and testament of Leland Stanford, deceased, a citizen and resident of the State of California; Thomas E. Stillman, a citizen and resident of State of New York; Thomas H. Hubbard, a citizen and resident of State of New York; A. N. Towne, a citizen and resident of the State of California; J. A. Fillmore, a citizen and resident of the State of California; D. O. Mills, Lloyd Tevis, and
1473 Gerrit L. Lansing, trustees, each a resident of and citizen of the State of California; T. H. Goodman, a citizen and resident of the State of California; John A. Muir, a citizen of the State of California, residing within the southern district of California; and D. Burkhalter, a citizen of the State of California, residing within the southern district of California, defendants.

In Equity.

Decree.

In open court this 4th day of August, 1894, being a day in the anuary term, A. D. 1894, of said Circuit Court of the United States or the Southern District of California, it having been made to ppear to the court that the Attorney General of the United States as directed the dismissal of the above-entitled suit without preju- ice, and George J. Denis, Esq., United States attorney, and Joseph . Call, Esq., special assistant United States attorney, having pre-
74 sented such matter to the court, and in pursuance of such direction of the Attorney General, moved for such dismissal, and the court having thereupon ordered that said motion be anted:

It is therefore ordered, adjudged, and decreed that the petition i
equity of the said complainants, the United States of America, be, an
the same hereby is, dismissed without prejudice.

Los Angeles, August 4th, 1894.

Ross,
District Judge.

Decree entered and recorded August 4th, 1894.
WM. M. VAN DYKE, *Clerk.*

(Endorsed:) No. 609. U. S. Circuit Court, Ninth Circuit, Sou
ern District of California. The United States of America vs. T
Southern Pacific Company (a corporation) et al. Decree. Fil
Aug. 4, 1894. Wm. M. Van Dyke, clerk.

1475 Whereupon said petition in equity, order that subpœ
issue, and final decree are hereto annexed; said final dec
being duly signed, filed, and entered herein, pursuant to the practi
of said circuit court.

Attest, etc.:
[SEAL.]
WM. M. VAN DYKE, *Clerk.*

(Endorsed:) No. 609. In the Circuit Court of the United Sta
Ninth Judicial Circuit, for the Southern District of Californ
The United States of America vs. The Southern Pacific Company
corporation) et al. Enrolled papers. Filed August 4th, 1894. W
M. Van Dyke, clerk. By ——, deputy clerk. Recorded. Dec
Register Book No. 1, page 548.

1476 United States of America. Circuit Court of the United Sta
Ninth Circuit, Southern District of California.

The United States of America vs. The Southern Pacific Compa
a corporation, et al. Clerk's office. No. 609. Praecipe.

To the clerk of said court:

SIR: Please issue for service in the above-entitled cause one ori
nal subpœna and seventy certified copies thereof.

Los Angeles, July 17, 1894.

JOSEPH H. CALL,
Spl. Asst. U. S. Atty.

(Endorsed:) No. 609. U. S. Circuit Court, Ninth Circuit, So
ern District of California. The United States of America vs.
Southern Pacific Company, a corporation, et al. Praecipe for
pœna and certified copies. Filed July 17, 1894. Wm. M. Van D
clerk.

1477 United States of America. Circuit Court of the United States, Ninth Circuit, Southern District of California.

The United States of America vs. The Southern Pacific Company, a corporation, et al. Clerk's Office. No. 609. Praecipe.

To the clerk of said court:

SIR: Please issue 6 alias subpœnas for service on defendants residing in other districts than the Southern District of California, and 10 certified copies of each of said alias subpœnas—in all 60 certified copies.

Los Angeles, July 19th, 1894.

JOSEPH H. CALL,
Spl. Asst. U. S. Atty.

(Endorsed:) No. 609. U. S. Circuit Court, Ninth Circuit, Southern District of California. The United States of America vs. The Southern Pacific Company, a corporation, et al. Praecipe for 6 alias subpœnas and 10 certified copies of each. Filed July 19, 1894. Wm. M. Van Dyke, clerk.

1478 United States of America. Circuit Court of the United States, Ninth Circuit, Southern District of California.

The United States of America vs. The Southern Pacific Company, a corporation, et al. Clerk's office. No. 609. Praecipe.

To the clerk of said court:

SIR: Please issue for service in the above-entitled cause thirty-seven (37) certified copies of alias subpœnas issued in said cause.

Los Angeles, July 20th, 1894.

JOSEPH H. CALL,
Spl. Asst. U. S. Attorney.
Per G. J. D., *U. S. Atty.*

(Endorsed:) No. 609. U. S. Circuit Court, Ninth Circuit, Southern District of California. The United States of America vs. The Southern Pacific Company, a corporation, et al. Praecipe for thirty-seven (37) certified copies of alias subpœnas. Filed July 20, 1894. Wm. M. Van Dyke, clerk.

1479 United States of America. Circuit Court of the United State
Ninth Circuit, Southern District of California.

United States v. Southern Pacific Company et al. Clerk's offi
No. 609. Praecipe.

To the clerk of said court:

SIR: Please issue copy of bill in equity filed in above cause an
oblige.

JOHN D. BICKNELL.

(Endorsed:) No. 609. U. S. Circuit Court, Ninth Circuit, South
ern District of California. United States v. Southern Pacific Co
pany et al. Praecipe for copy of bill. Filed Jul. 20, 1894. Wm. M
Van Dyke, clerk.

1480 United States of America. Circuit Court of the United State
Ninth Circuit, Southern District of California.

The United States of America, vs. The Southern Pacific Company,
corporation, et al. Clerk's office. No. 609. Praecipe.

To the clerk of said court:

SIR: Please issue a certified copy of the petition in equity filed i
the above-entitled cause.

Los Angeles, July 21st, 1894.

GEORGE J. DENIS,
U. S. Attorney.

(Endorsed:) No. 609. U. S. Circuit Court, Ninth Circuit, South
ern District of California. The United States of America vs. Th
Southern Pacific Company, a corporation, et al. Praecipe for ce
tified copy of petition in equity. Filed Jul. 21, 1894. Wm. M. Va
Dyke, clerk.

1481 I, Wm. M. Van Dyke, clerk of the Circuit Court of th
United States for the Southern District of California, do her
by certify the foregoing to be a full, true, and correct copy of a
pleadings and papers filed and of all orders made and entered in th
cause entitled The United States of America, complainants, vs. Th
Southern Pacific Company, a corporation, et al., defendants, No. 60
as the same remain on file and of record in my office.

Attest my hand and the seal of said Circuit Court this 25th da
of April, A. D. 1908.

[SEAL.]

WM. M. VAN DYKE, *Clerk,*
By CHAS. N. WILLIAMS, *Deputy.*

1482 DEFENDANTS' EXHIBIT No. 97, MAY 29, 1915.

This lease, made this first day of March, A. D. 1912, by and between Central Pacific Railway Company, a corporation organized and existing under and by virtue of the laws of the State of Utah, party of the first part and lessor, and Southern Pacific Company, a corporation duly organized and existing under laws of the State of Kentucky, party of the second part and lessee—

Witnesseth:

That whereas heretofore, on the 17th day of February, 1885, Central Pacific Railroad Company and Southern Pacific Company entered into an agreement of lease, covering the whole of the railroad, equipment, and property then owned by said Central Pacific Railroad Company and situated in the Territory of Utah and States of Nevada and California; and

Whereas said agreement and lease was subsequently changed and modified by four certain written agreements entered into between said Central Pacific Railroad Company and Southern Pacific Company, and dated, respectively, January 1, 1888, December 7,
1483 1893, March 22, 1894, and April 15, 1897, all of which said five agreements are hereby referred to and made a part hereof as fully as if they were herein set forth in full; and

Whereas subsequent to said amendment and agreement of April 15, 1897, Central Pacific Railroad Company sold, assigned, and transferred unto Central Pacific Railway Company, said lessor, all of the railroad, rights, properties, and franchises which were the subject of said five agreements with said Southern Pacific Company; and

Whereas said lessor, as the successor in interest of said Central Pacific Railroad Company, has recognized said five agreements and has continued to receive the benefits arising therefrom to it as the successor in interest of said Central Pacific Railroad Company and all benefits which would have been realized therefrom by said Central Pacific Railroad Company but for said sale to said lessor; and

Whereas the consideration moving and to move from said Southern Pacific Company for the exercise of the rights enjoyed by it under said five agreements made by it with Central Pacific Railroad Company is deemed by this lessor to be ample and adequate for the execution of this agreement and lease and for the rights to be
1484 enjoyed by said Southern Pacific Company under this agreement; and

Whereas before the acquisition of said property of said Central Pacific Railroad Company by said lessor Central Pacific Railroad Company acquired certain property not specifically mentioned and described in said five agreements, but which has been treated by the

parties hereto as falling under and leased by the effect of said five agreements; and

Whereas since the acquisition of said property of said Central Pacific Railroad Company by the said lessor said lessor has acquired certain property connected with and necessary in the conduct of the line of railroad acquired by it from said Central Pacific Railroad Company, which said after-acquired property has also been treated as falling under the terms and effect of said five agreements by said Central Pacific Railroad Company; and

Whereas, in addition to the after-acquired property of said lessor next hereinbefore mentioned, said lessor has acquired by deeds dated February 29, 1912, certain properties from Central California Railway Company, Oregon Eastern Railway Company, Nevada & California Railway Company, Chico & Northern Railroad Company, Fernley & Lassen Railway Company, Goose Lake & Southern
1485 Railway Company, Modoc Northern Railway Company, and Sacramento Southern Railroad Company:

Now, therefore, it is hereby agreed by and between the said lessor and the said lessee that the following properties now owned by said lessor shall be, and are hereby, subjected to the terms, conditions, and provisions of the lease herein by said Southern Pacific Company of the properties formerly owned by Central Pacific Railroad Company, as said lease is evidenced by said five agreements between said Central Pacific Railroad Company and said Southern Pacific Company, and for no other or further consideration, and for the unexpired portion of the term of said lease of said Southern Pacific Company of said properties of said Central Pacific Railroad Company, as evidenced by said five agreements.

The property so hereby leased consists of—

1st. All railroad properties, together with their branches, depots, station houses, equipments, appurtenances, appendages, and adjuncts of every kind and nature acquired by said Central Pacific Railroad Company subsequent to the date of said agreement of April 15, 1899.

2nd. All railroads, together with their branches, depots, station houses, equipments, appurtenances, appendages, and adjuncts
1486 of every kind and nature acquired by said Central Pacific Railway Company prior to February 29, 1912.

3rd. The following railroad properties acquired by said Central Pacific Railway Company on February 29, 1912:

All that certain line of railroad formerly belonging to the Central California Railway Company, and extending from a connection with the line of railroad of the Central Pacific Railway Company at Niles, in the county of Alameda, in a general southwesterly direction through Newark, in the county aforesaid, and across San Francisco Bay to a connection with the railroad of the Southern Pacific Rail-

road Company at Redwood City, in the county of San Mateo, all in the State of California, being about 16.316 miles in length, together with all of the rights, powers, immunities, privileges, franchises, and other property appertaining thereto.

Also those certain lines of railroad, together with all of the rights, powers, immunities, privileges, franchises, and other property appertaining thereto, formerly the property of Nevada & California Railway Company, a California corporation, and by it conveyed to Central Pacific Railway Company, a Utah corporation, by deed dated February 29, 1912, which said lines of railroad are described as follows:

1487 (a) A line of railroad extending from a connection with the railroad of the Central Pacific Railway Company at or near Hazen, Churchill County, Nevada, in a general southeasterly direction via Churchill and Tonopah Junction, Nevada, and Owenyo, California, to Keeler, Inyo County, California, through Churchill, Lyon, and Mineral Counties, Nevada, and Mono and Inyo Counties, California, about 288.64 miles.

(b) A line of railroad extending from a connection with line (a), above described, at or near Hazen in a general southeasterly direction to Fallon, all in Churchill County, Nevada, about 15.92 miles.

(c) A line of railroad extending from a connection with line (a), above described, at or near Churchill in a general southwesterly direction to Mound House, all in Lyon County, Nevada, about 26.21 miles.

(d) A line of railroad extending from a connection with line (a), above described, at or near Filben in a general southeasterly direction to Candelaria, all in Mineral County, Nevada, about 5.51 miles.

1488 (e) A line of railroad extending from a connection with line (a), above described, at or near Owenyo, Inyo County, in a general southerly direction, through San Bernardino County, to a connection with the railroad of the Southern Pacific Railroad Company at or near Mojave, Kern County, all in the State of California, about 142.68 miles.

Also all those certain lines of railroad, together with all of the rights, powers, immunities, privileges, franchises, and other property appertaining thereto, which were conveyed to Central Pacific Railway Company by Oregon Eastern Railway Company, an Oregon corporation, by deed dated February 29, 1912, and which said lines of railroad so hereby leased are described as follows:

The constructed line of railroad acquired by the Oregon Eastern Railway Company from the California Northeastern Railway Company extending from a connection with the line of railroad of the Central Pacific Railway Company at or near Weed Station, in Siskiyou County, California, in a general northeasterly direction to

Klamath Falls, Klamath County, Oregon; and also the line of railroad projected and partly constructed by the Oregon Eastern Railway Company extending from a connection with the aforesaid line of railroad of the Oregon Eastern Railway Company at said Klamath Falls in a general northerly direction to Odell, in said
1489 Klamath County, Oregon, and thence in a general northwesterly direction to a connection with the line of railroad of the Oregon & California Railroad Company at or near Natron, Lane County, Oregon.

4th. All railroads, property, branches, depots, station houses, equipments, appurtenances, appendages, and adjuncts, of every kind and nature, now owned and hereafter acquired or constructed by said Central Pacific Railway Company as or in connection with main lines, extensions, or branches, including the extension of said former Oregon Eastern Railway Company's line, and the lines projected by Fernley & Lassen Railway Company, Goose Lake & Southern Railway Company, and Modoc Northern Railway Company.

Nothing in this agreement contained shall be construed to cover the property acquired by the said lessor from Chico & Northern Railroad Company by deed dated February 29, 1912, nor the property acquired by said lessor from Sacramento Southern Railroad Company by deed dated February 29, 1912, nor any extensions or branches of said Chico & Northern Railroad Company or said Sacramento Southern Railroad Company, so long as the properties formerly owned by said two last-mentioned companies are under
1490 lease to corporations other than said lessee.

It is hereby further expressly understood and agreed that this lease shall and will be subordinated in all its terms and conditions to any future mortgage, deed of trust, or instrument evidencing or establishing a lien for indebtedness made or executed by the lessor upon any or all of the properties hereby leased; and in the event of such mortgage, deed of trust, or lien being foreclosed in whole or in part, this lease shall have no priority with respect to the rights acquired under such instrument creating or evidencing such lien, or under such foreclosure.

It is further agreed that the automatic extension of this lease to railroad properties hereafter constructed, including said lines and extensions projected by said Oregon Eastern Railway Company, Modoc Northern Railway Company, Goose Lake & Southern Railway Company, and Fernley & Lassen Railway Company, shall be effective only upon the completion of such after-constructed extensions, lines or branches, ready for operation, and as and at the time each new construction, including the ones above mentioned, is ready for operation.

1491 It is hereby further agreed that the lease now subsisting between Nevada & California Railway Company and Southern Pacific Company, dated July 1, 1909, be, and the same is hereby, cancelled.

In witness whereof each of the parties hereto has caused these presents to be signed by its president or a vice president and its corporate seal to be hereunto affixed, attested by its secretary or assistant secretary, all as of the day and year first above written.

[Official seal.] CENTRAL PACIFIC RAILWAY COMPANY,
By WM. F. HERRIN, *President.*

Attest:
G. I. KING, *Secretary.*

[Official seal.] SOUTHERN PACIFIC COMPANY,
By W. SPROULE, *President.*

Attest:
W. F. INGRAM, *Assistant Secretary.*

1492 STATE OF CALIFORNIA,
City and County of San Francisco, ss:

On this sixteenth day of March, in the year one thousand nine hundred and twelve, before me, E. B. Ryan, a notary public in and for the said city and county, residing therein, duly commissioned and sworn, personally appeared W. Sproule and W. F. Ingram, known to me to be the president and assistant secretary, respectively, of the Southern Pacific Company, the corporation described in and that executed the within instrument, and also known to me to be the persons who executed said instrument on behalf of the corporation therein named, and they acknowledged to me that such corporation executed the same.

In witness whereof I have hereunto set my hand and affixed my official seal, at my office, in the city and county of San Francisco, the day and year in this certificate first above written.

[Notarial seal.] E. B. RYAN,
Notary Public in and for the City and County of San Francisco, State of California.

My commission expires Feb. 25th, 1914.

1493 STATE OF CALIFORNIA,
City and County of San Francisco, ss:

On this sixteenth day of March, in the year one thousand nine hundred and twelve, before me, E. B. Ryan, a notary public in and for the said city and county, residing therein, duly commissioned and sworn, personally appeared Wm. F. Herrin and G. L. King, known to me to be the president and secretary, respectively, of the Central

Pacific Railway Company, the corporation described in and that executed the within instrument, and also known to me to be the persons who executed said instrument on behalf of the corporation therein named, and they acknowledged to me that such corporation executed the same.

In witness whereof I have hereunto set my hand and affixed my official seal at my office in the city and county of San Francisco, the day and year in this certificate first above written.

[Notarial seal.] E. B. RYAN,
Notary Public in and for the city and county of San Francisco, State of California.

My commission expires Feb. 25th, 1914.

1494 Consent of stockholders of Central Pacific Railway Company to lease of corporate property to Southern Pacific Company.

Whereas the board of directors of Central Pacific Railway Company have this day leased, demised, and let unto Southern Pacific Company, a corporation, lines of railroad of said Central Pacific Railway Company described in and on the terms stated by a written lease thereof, authorized and approved by the directors of said Central Pacific Railway Company on this day, as more fully appears and by the proceedings of said directors, evidenced by the minutes of their meeting this day held:

Now, therefore, the undersigned stockholders, holding of record more than two-thirds of the issued capital stock of Central Pacific Railway Company, do hereby expressly ratify and confirm all and every action of said board of directors in respect to said lease, the leasing of said property, and the authorization therefor, and do hereby consent to the execution and delivery of said lease.

Dated at San Francisco, California, this 16th day of March, 19[illegible]

1495 *Names of stockholders and no. of shares.*

Common stock:
Wm. F. Herrin----------
E. E. Calvin----------
G. L. King----------
William Hood----------
C. H. Redington----------
W. R. Scott----------
E. O. McCormick----------
Southern Pacific Company (by Wm. F. Herrin, vice president; W. F. Ingram, assistant secretary)---------- 62[illegible]

Preferred stock:
Southern Pacific Company (by Wm. F. Herrin, vice president; W. F. Ingram, assistant secretary)---------- 17[illegible]

1496 STATE OF CALIFORNIA,
City and County of San Francisco, ss:

On this 16th day of March, in the year one thousand nine hundred and twelve, before me, E. B. Ryan, a notary public in and for said city and county, residing therein, duly commissioned and sworn, personally appeared Wm. F. Herrin and E. E. Calvin, G. L. King and William Hood, C. H. Redington, W. R. Scott, and E. O. McCormick, known to me to be the persons described in, whose names are subscribed to, and who executed the annexed instrument, and they acknowledged to me that they executed the same.

In witness whereof I have hereunto set my hand and affixed my official seal at my office in the said city and county of San Francisco, the day and year last above written.

[Notarial seal.] E. B. RYAN,
Notary Public in and for the city and county of San Francisco, State of California.

My commission expires Feby. 25th, 1914.

1497 STATE OF CALIFORNIA,
City and County of San Francisco, ss:

On this sixteenth day of March, in the year one thousand nine hundred and twelve, before me, E. B. Ryan, a notary public in and for the said city and county, residing therein, duly commissioned and sworn, personally appeared Wm. F. Herrin and W. F. Ingram, known to me to be the vice president and assistant secretary, respectively, of the Southern Pacific Company, the corporation described in and that executed the within instrument, and also known to me to be the persons who executed said instrument on behalf of the corporation therein named, and they acknowledged to me that such corporation executed the same.

In witness whereof I have hereunto set my hand and affixed my official seal, at my office, in the city and county of San Francisco, the day and year in this certificate first above written.

[Notarial seal.] E. B. RYAN,
Notary Public in and for the City and County of San Francisco, State of California.

My commission expires Feb. 25th, 1914.

1498 DEFENDANTS' EXHIBIT No. 98, MAY 29, 1915.

Southern Pacific Company to Union Trust Company of New York, trustee.

Four per cent mortgage (Central Pacific stock collateral). Dated August 1st, 1899.

1499 NEW YORK, *May 21, 1915.*

I, John V. B. Thayer, vice president of the Union Trust Company of New York, do hereby certify that this is a true copy of the original mortgage, dated August 1st, 1899, of the Southern Pacific Company to Union Trust Company of New York, trustee, to secure an issue of bonds known as Southern Pacific Company four per cent gold bonds (Central Pacific stock collateral).

JOHN V. B. THAYER.

1500 [$14,409.25 internal-revenue stamps affixed and cancelled.]

This indenture, made the first day of August, A. D. 1899, by and between the Southern Pacific Company, a corporation created, organized, and existing under and by virtue of the laws of the State of Kentucky, party of the first part, and the Union Trust Company of New York, a corporation created, organized, and existing under and by virtue of the laws of the State of New York, party of the second part.

Witnesseth:

Whereas the party of the first part, in pursuance of its corporate powers, has acquired, and now holds, the preferred and common stock hereinafter described of the Central Pacific Railway Company, a corporation created, organized, and existing under the laws of the State of Utah; and

Whereas the party of the first part is about to issue (to the amount and within the limits hereinafter prescribed on that behalf) its four per cent gold bonds, to be designated as four per cent gold bonds—Central Pacific stock collateral—in the general forms following, that is to say:

1501 [Form of coupon bond.]

No. $1,000 (or $500)

United States of America. Southern Pacific Company. Four per cent gold bond, Central Pacific stock collateral.

Know all men by these presents that the Southern Pacific Company, for value received, promises to pay to the bearer or, if regis-

tered, to the registered holder, of this bond, on the first day of August, nineteen hundred and forty-nine, at the office or agency of the Southern Pacific Company, in the city of New York, one thousand (or five hundred) dollars, gold coin of the United States of the present standard of weight and fineness, and to pay interest thereon at the rate of four per cent per annum from August 1, 1899, payable semi-annually at the said office or agency, in like gold coin, on the first day of June and the first day of December in each year, but only upon presentation and surrender, as they severally mature, of the
1502 coupons therefor annexed hereto.

The right is reserved to the Southern Pacific Company and its successors, at its or their option, to redeem this bond at par and accrued interest thereon, upon giving previous notice of its or their intention so to do by publication as prescribed in the mortgage or deed of trust hereinafter mentioned, and the interest upon this bond shall cease at the time for which the same shall have been so called for redemption, as provided in said mortgage or deed of trust.

Both the principal and interest of this bond are payable without deduction for any tax or taxes which the Southern Pacific Company may be required to pay, or to retain therefrom, under any present or future law of the United States or of any State or county or municipality therein.

This bond is one of a series of four per cent gold bonds—Central Pacific stock collateral—(coupon and registered) of the Southern Pacific Company, issued and to be issued for an aggregate principal sum not exceeding thirty-six million eight hundred and nineteen thousand dollars at any one time outstanding, under and in pursuance of, and all equally secured by, a mortgage or deed of trust dated April 1st, 1899, executed by the Southern Pacific Com-
1503 pany to the Union Trust Company of New York, as trustee, covering the preferred and common stock of the Central Pacific Railway Company, pledged or to be pledged by said mortgage or deed of trust, to which reference is hereby made for a statement of the stock so mortgaged, the nature and extent of the security, the rights of the holders of said bonds under the same, and the terms and conditions upon which said bonds are issued and secured.

This bond shall pass by delivery unless registered in the owner's name on the books of the Southern Pacific Company at its office or agency in the city of New York, such registry being noted on the bond by the bond registrar of the Southern Pacific Company. After such registration no transfer shall be valid unless made on the company's books by the registered owner and similarly noted on the bond; but the same may be discharged from registry by being transferred to bearer, and thereafter transferability by delivery shall be

restored; but this bond may again, from time to time, be registered or transferred to bearer as before. Such registration, however, shall not affect the negotiability of the coupons, which shall continue to be transferable by delivery merely.

1504 The holder may also, at his option, surrender for cancellation this bond with the coupons for future interest thereon in exchange for a registered bond without coupons, as provided in said mortgage or deed of trust.

This bond shall not become obligatory for any purpose until it shall have been authenticated by the certificate, hereon endorsed, of the trustee under said mortgage or deed of trust.

In witness whereof the Southern Pacific Company has caused these presents to be signed by its president or one of its vice presidents and its corporate seal to be hereunto affixed, and to be attested by its secretary or an assistant secretary, and coupons for said interest with the engraved signature of its treasurer to be attached hereto this first day of August, 1899.

(The mortgage or deed of trust securing this bond has been duly stamped according to law.)

[L. S.] SOUTHERN PACIFIC COMPANY,

By ——— ———,

Vice President.

Attest:

By ——— ———,

Assistant Secretary.

1505 [Form of interest coupon.]

No. ——. $20 (or $

On the first day of the Southern Pacific Company will pay to bearer, at its office or agency in the city of New York, two (or ten) dollars, United States gold coin of the present standard weight and fineness, without deduction for taxes, being six months' interest then due on its four per cent gold bond—Central Pacific stock collateral—No. ——.

——— ———,

Treasurer.

1506 [Form of registered bond.]

No. $

United States of America. Southern Pacific Company four per cent gold bond, Central Pacific stock collateral.

Know all men by these presents that the Southern Pacific Company for value received promises to pay to or registered assigns the sum of dollars, gold coin of the United States of

present standard of weight and fineness, on the first day of August, nineteen hundred and forty-nine, at the office or agency of the Southern Pacific Company in the city of New York, and to pay interest thereon at the rate of four per cent per annum from the first day of June or December next preceding the date hereof, payable semiannually at the said office or agency, in like gold coin, on the first day of June and the first day of December in each
1507 year, until the payment of said principal sum.

The right is reserved to the Southern Pacific Company and its successors, at its or their option, to redeem this bond at par and accrued interest thereon, upon giving previous notice of its or their intention so to do by publication as prescribed in the mortgage or deed of trust hereinafter mentioned, and the interest upon this bond shall cease at the time for which the same shall have been so called for redemption, as provided in said mortgage or deed of trust.

Both the principal and interest of this bond are payable without deduction for any tax or taxes which the Southern Pacific Company may be required to pay or to retain therefrom under any present or future law of the United States or of any State or county or municipality therein.

This bond is one of a series of four per cent gold bonds—Central Pacific stock collateral—(coupon and registered) of the Southern Pacific Company, issued and to be issued for an aggregate principal sum not exceeding thirty-six million eight hundred and nineteen thousand dollars at any one time outstanding, under and in pursuance of, and all equally secured by, a mortgage or deed of
1508 trust dated August 1st, 1899, executed by the Southern Pacific Company to the Union Trust Company of New York, as trustee, covering the preferred and common stock of the Central Pacific Railway Company pledged or to be pledged by said mortgage or deed of trust, to which reference is hereby made for a statement of the stock so mortgaged, the nature and extent of the security, the rights of the holders of said bonds under the same, and the terms and conditions upon which said bonds are issued and secured.

This bond is transferable by the registered holder thereof in person or by attorney duly authorized on the books of the Southern Pacific Company at its office or agency in the city of New York upon surrender and cancellation of this bond; and thereupon a new registered bond will be issued to the transferee in exchange herefor, as provided in said mortgage or deed of trust, and on payment, if the Southern Pacific Company shall so require, of the charge therein provided for.

This bond shall not become obligatory for any purpose until it shall have been authenticated by the certificate hereon endorsed of the trustee under said mortgage or deed of trust.

1509 In witness whereof the Southern Pacific Company has caused these presents to be signed by its president or one of its vice presidents and its corporate seal to be hereunto affixed and to be attested by its secretary or an assistant secretary this day of .

(The mortgage or deed of trust securing this bond has been duly stamped according to law.)

[L. S.] SOUTHERN PACIFIC COMPANY,

By

Vice President.

Attest:

Assistant Secretary.

[Form of trustee's certificate.]

This bond is one of a series of bonds described in the within-mentioned mortgage or deed of trust executed by the Southern Pacific Company to the undersigned.

UNION TRUST COMPANY OF NEW YORK,
Trustee.

By

Vice President.

1510 Whereas the said bonds of the party of the first part so to be issued as aforesaid are to be secured by the pledge and deposit with the trustee hereunder of the said preferred and common stock of the Central Pacific Railway Company and of such preferred and common stock of the last-mentioned company as may be hereafter deposited hereunder with the said trustee; and

Whereas at a meeting of the board of directors of the party of the first part, duly called, and held on the nineteenth day of September 1899, the following resolutions were adopted, that is to say:

Resolved, That for the corporate purposes of the company this company issue its bonds, to be known as "Four per cent gold bonds—Central Pacific stock collateral"—to an amount which shall not in any event exceed in the aggregate the principal sum of $36,819,000 at any one time outstanding. Such bonds shall bear date August 1, 1899, in the case of coupon bonds and of the time of their issue in the case of registered bonds, shall become and be payable on the first day of August, 1949, in gold coin of the United States of the present standard of weight and fineness, and shall bear interest

1511 at a rate not exceeding four per centum per annum, payable semiannually, in like gold coin, on the first day of June and the first day of December in each year, but shall be subject to the

right on behalf of the company and its successors, at its and their option, to redeem the same at par and accrued interest thereon upon giving previous notice of its or their intention so to do by publication as prescribed in the mortgage or deed of trust hereinafter mentioned. Said bonds shall be issued either as coupon or registered bonds. The coupon bonds shall be for the principal sum of one thousand dollars or five hundred dollars each, and shall give to the holders the right to register the principal thereof, and also the right to convert the same into fully registered bonds. The registered bonds without coupons shall be each for the principal sum of one thousand dollars, or such multiples thereof as the company by resolution of its board of directors may from time to time prescribe, and may be issued originally either as registered bonds or in exchange for coupon bonds for an equivalent sum. Such bonds, whether coupon bonds or registered bonds, shall be issued, as shall be determined by the action of the board of directors or the executive committee of the company, at such times and to such amounts as the purposes for which they are
512 to be issued may require. When issued such bonds shall be signed by the president or any vice president of the company, and the corporate seal shall be thereunto affixed and attested by the secretary or any assistant secretary. In case the officers who shall have signed and sealed any such bonds shall cease to be officers of the company before the bonds so signed and sealed shall have been actually issued, certified, and delivered, such bonds may, nevertheless, be adopted and used by the company, and may be issued, certified, and delivered as though the persons who signed and sealed such bonds had not ceased to be officers of the company. There shall be attached to the coupon bonds coupons for the interest to grow due thereon, authenticated by the engraved signature of the treasurer or of any future treasurer of the company; and the company may adopt and use for that purpose the engraved signature of any person who shall have been such treasurer, notwithstanding the fact that such person may have ceased to be such treasurer when such bonds shall have been actually issued, certified, and delivered.

Resolved further, That in order to secure the payment of said bonds issued and to be issued, with interest thereon, this com-
513 pany execute a mortgage or deed of trust to the Union Trust Company of New York, a corporation of the State of New York, as trustee, covering the preferred and common stock of the Central Pacific Railway Company described in the printed form of mortgage now submitted to this board.

Resolved further, That the said printed form of mortgage now submitted to the board and the forms of bonds embodied therein be, and the same are hereby, approved, and that the president or any vice president and the secretary or any assistant secretary be, and

they are hereby, authorized to execute and deliver the same on b
half of the company under its corporate seal.

Now, therefore the said parties hereto, in consideration of th
premises and of one dollar to each by the other in hand paid at
before the ensealing and delivery of these presents, the recei
whereof is hereby acknowledged, and for other good and valuabl
considerations, do each covenant, promise, and agree, for themselv
and their respective successors and assigns, in manner and form fo
lowing; that is to say:

First. The said party of the first part has simultaneously with th
execution hereof pledged and deposited with the said party
1514 the second part certificates duly issued to and in the name
the party of the first part or its nominees, and assigned by
or them in blank, with irrevocable power to transfer the same, re
resenting preferred and common stock of the Central Pacific Railw
Company to the following amounts, respectively; that is to say:

1. Preferred stock to the amount at its face value of twelve m
lion dollars ($12,000,000).

2. Common stock to the amount, at its face value, of sixty-sev
million two hundred and seventy-four thousand two hundred dolla
($67,274,200).

The said certificates so pledged and deposited with the party of t
second part are to be held by the said party of the second part
its successors in this trust, subject to the reservations, terms, and co
ditions hereinafter expressed, upon trust for the benefit of the se
eral persons and corporations who shall be or become holders, respe
tively, of any of the bonds issued or to be issued hereunder by t
party of the first part or its successors to secure to such holde
equally and without preference of one over another, by reason
priority of time of issue thereof or otherwise, the due and punctu
payment of the said bonds and the interest thereon as it sh
1515 become due, according to the tenor and effect of the said bon
and the interest coupons attached thereto.

Second. The said party of the first part further covenants a
agress that it will, and its successors and assigns shall, in like manne
from time to time, pledge and deposit with the said party of the s
ond part, or its successors in this trust, further certificates issued
and in the name of the party of the first part, or its successors or
or their nominees, and assigned by it or them in blank with ir
vocable power to transfer the same, representing preferred stock
the said Central Pacific Railway Company, not exceeding in the
gregate eight million dollars ($8,000,000), when the same shall ha
been delivered to the party of the first part, or its successors
assigns, from time to time, in consideration of the issue hereunder
said party of the first part, or its successors, of bonds not exceed

the like amount, as provided in clauses 2 and 3 of article third of this indenture, such deposits to be made promptly from time to time as soon as practicable after the acquisition of such preferred stock by the party of the first part, or its successors or assigns, the same to be held by the said party of the second part and its suc-
1516 cessors in this trust for the uses and purposes and upon the trusts and subject to the reservations, terms, and conditions set forth and declared in this indenture.

Third. The party of the second part and its successors in the trust hereby created is and are to authenticate and certify as issued hereunder, and deliver to the party of the first part, its successors or assigns, or upon its or their order, bonds of the party of the first part or its successors, in the forms or substantially the forms above prescribed to the amounts and upon the conditions hereinafter stated, and not otherwise, that is to say:

1. Bonds to the amount, at their face value, of twenty-eight million eight hundred and eighteen thousand five hundred dollars ($28,818,500), simultaneously with the deposit with the trustee hereunder of the certificates referred to in article first hereof, representing twelve million dollars ($12,000,000), par value, preferred stock, and sixty-seven million two hundred and seventy-four thousand two hundred dollars ($67,274,200) par value, common stock, of the said Central Pacific Railway Company.

2. Bonds to the further amount of three million dollars
1517 ($3,000,000), at their face value, to be reserved by the party of the first part, or its successors, (a) to be used to provide additional funds, if required, for the payment from time to time of any of the twenty promissory notes for $2,940,635.78 each, heretofore delivered to the United States under a settlement agreement between the United States of America, the Central Pacific Railroad Company, and Messrs. Speyer & Co., dated February 1, 1899; or (b) when such notes shall have been paid, to be applied at their market value to provide for payment for, or the reimbursement of, the cost of betterments and additions to the properties of the Central Pacific Railway Company, covered by the mortgages securing its first refunding and three and one-half per cent mortgage bonds, as such cost shall be certified by the president or vice president and chief engineer of the Central Pacific Railway Company.

3. Bonds to the further amount of five million dollars ($5,000,000), at their face value, to be reserved by the party of the first part, or its successors, to be applied at their market value to provide for payment for, or reimbursement of, the cost of betterments and additions to the said properties of the Central Pacific Railway Company, as such cost shall be certified by the president or vice president

1518 and chief engineer of the said railway company; but the
amount of such additional bonds so to be applied under claus
3 hereof shall not at any time exceed at their face value two hundred
thousand dollars per annum from the date of this indenture.

When and as any such bonds are issued by said party of the firs
part, or its successors, under clause 2 or 3 hereof, the like amount
at their par value of preferred stock of the Central Pacific Railway
Company are to be received by it or them in consideration therefor
and are to be forthwith deposited with the trustee hereunder, to be
held by the said trustee for the uses and purposes and upon the
trusts and subject to the reservations, terms, and conditions set
forth and declared in this indenture.

The party of the first part hereby covenants and agrees with the
party of the second part and with the holders of the bonds intended
to be secured by this indenture that the said bonds and their pro-
ceeds shall be used and applied only to the objects and purposes
above specified.

All the above bonds authenticated in compliance with the pro-
visions of this indenture shall be equally secured hereby with-
1519 out regard to the time or times when the said bonds shall have
been actually issued or otherwise, and without any discrim-
ination or preference of one over another.

Any of the foregoing bonds from time to time, at the option of
the party of the first part or its successors, may be executed, au-
thenticated, and certified originally either as coupon bonds or as reg-
istered bonds, but the aggregate amount of the bonds issued and out-
standing under this indenture shall never at any one time exceed
the principal sum of thirty-six million eight hundred and nineteen
thousand dollars ($36,819,000).

Only such bonds as shall bear thereon endorsed a certificate of the
trustee hereunder by it duly executed under the hand of its president
or a vice president thereof shall be secured by this indenture or shall
be entitled to any lien or benefit thereunder, and every such certificate
of the said trustee upon any bond executed in behalf of the party
of the first part, or its successors, shall be conclusive evidence that
the bond so certified has been duly issued hereunder and is entitled to
the benefit of the trust hereby created.

Before certifying or delivering any coupon bond hereby secured
the trustee hereunder shall cut off and cancel all coupons
1520 thereof then matured, and the said Trustee shall not certify
or deliver any registered bond bearing interest from any date
more than six months prior to such certification or delivery.

Whenever any coupon bond or bonds issued under and secured
by this indenture, together with all unmatured coupons thereto be-
longing, shall be surrendered for exchange for registered bonds,

party of the first part or its successors shall issue, and the said trustee shall certify and deliver, in exchange for such coupon bond or bonds, a like amount of registered bonds without coupons. Such registered bonds shall be for $1,000 or for such multiples thereof as, from time to time, the party of the first part or its successors, may prescribe, and shall bear interest at the same rate as the surrendered coupon bonds and from the date of the last matured coupon thereof. In every case of such exchange the said trustee forthwith shall cancel the surrendered bond or bonds and coupons, and shall deliver the same to the party of the first part or its successors.

Whenever any such registered bond shall be surrendered for transfer, the party of the first part or its successors shall issue, and the said trustee shall certify and deliver, to the transferee, upon
1521 surrender and cancellation of the bond or bonds transferred, a like amount of new registered bonds for $1,000, or for such multiples of $1,000 as the party of the first part or its successors, from time to time, may authorize, and bearing interest at the same rate as the surrendered registered bond or bonds, but no registered bond may be converted into a coupon bond.

For any exchange of coupon bonds for registered bonds, and for any transfer of registered bonds without coupons, the party of the first part or its successors, at its or their option, may make a charge not exceeding one dollar for each new registered bond issued upon such exchange or transfer.

Upon surrender by the party of the first part, or its successors, to the trustee for cancellation of any coupon or registered bonds issued hereunder and secured hereby, with a request that bonds be issued hereunder for the like amount at a reduced rate of interest, the trustee shall certify and deliver to the party of the first part or its successors bonds issued hereunder and secured hereby to the amount at their face value of the bonds so surrendered, and carrying interest at such lower rate of interest than four per cent per annum, payable semiannually, as the party of the first part or its successors
1522 may prescribe in that behalf, and the new bonds so certified and delivered shall be entitled to share in the security of these presents with the like effect as if they had been bonds originally issued under this mortgage.

In case any coupon bond issued hereunder, with the coupons thereto appertaining, or any registered bond without coupons, shall become mutilated or be destroyed the party of the first part or its successors, in its or their discretion, may issue, and thereupon the said trustee shall certify and deliver a new bond of like tenor and date, bearing the same distinguishing number, in exchange and substitution for and upon cancellation of the mutilated coupon bond and its coupons or the mutilated registered bond, or in lieu of and substitution for the

coupon bond and its coupons or the registered bond so destroyed upon receipt of satisfactory evidence of the destruction of such coupon bond and its coupons or of such registered bond and upon receipt also of satisfactory indemnity.

Fourth. The party of the first part and its successors is and are to have the right, at its or their option, to redeem the bonds issued hereunder at par and accrued interest thereon upon giving
1523 previous notice of its or their intention so to do, by publication at least twice a month for three successive months in one newspaper in New York and one newspaper in London, England, the first such publication to be at least six months prior to the date at which such bonds are called for redemption, and the interest upon such bonds shall cease at the time for which the same shall have been so called for redemption, unless the party of the first part or its successors shall thereafter make default in the payment of said bonds at the rate above prescribed upon presentation thereof for that purpose.

Fifth. The party of the first part also covenants with the party of the second part that the party of the first part, its successors or assigns, shall and will punctually pay to the holders of the bonds aforesaid intended to be secured hereby the interest thereon when and as the same shall become due and payable according to the terms and conditions in the said bonds and coupons set forth and contained, and shall and will also, when the principal sums of the said bonds shall according to the provisions thereof become due and payable, fully and entirely pay, satisfy, and discharge the whole of said bonds, both principal and interest.

Sixth. Until default shall be made in the payment of the
1524 principal or interest of the bonds authenticated hereinunder and intended to be secured hereby, or some of them, the party of the second part, and its successors in this trust, shall permit and suffer the party of the first part, its successors and assigns, to retain all the authority, powers, rights, and privileges belonging or incident to the stock hereby pledged or agreed to be pledged or to the ownership thereof not inconsistent with the rights of the party of the second part, or its successors in this trust, as herein expressed.

And it is likewise an express condition of this indenture that until default shall be made in the payment of the principal or interest of the bonds authenticated hereunder and intended to be secured hereby, or some of them, the preferred and common stock of the said Central Pacific Railway Company pledged by the party of the first part, or its successors, with the party of the second part, or its successors, in trust upon the trusts herein declared, shall remain or be registered in the name of the said party of the first part, or its successors or its or their nominees or assigns

provided the certificates representing such stock assigned in blank, with irrevccable power of transfer executed by the registered
1525 owners, shall be deposited with the party of the second part, or its successors in this trust, under and subject to the terms and conditions of this trust, the party of the first part, or other registered owners of such deposited stocks being entitled to have the same transferred upon the books of the Central Pacific Railway Company to such persons or parties as may be designated by it or them, provided arrangements satisfactory to the party of the second part, or its successors in this trust, are made for securing the deposit hereunder with the party of the second part, or its successors in this trust, of the new certificates representing such transferred stocks assigned in blank, with irrevocable power of transfer executed by the registered owner or owners; and the person or persons, corporation or corporations, in whose name the said stock shall be registered shall have and enjoy all the rights, powers, and privileges of a stockholder with respect to the said shares of stock, including the voting power thereon, and the right to collect and receive any and all amounts which may from time to time be paid on account of dividends upon either class of the said stock or otherwise in respect thereof, except by way of distribution of capital, and shall be entitled to take any and all proceedings which the party of the
1526 first part, or its successors or assigns, may deem requisite for the protection of its or their rights and interests under or in respect of the said stock.

Seventh. The party of the first part further covenants that, while the bonds issued hereunder remain outstanding, neither the preferred nor the common stock of the Central Pacific Railway Company shall be increased beyond twenty million dollars ($20,000,000) par value of preferred stock and sixty-seven million two hundred and seventy-five thousand five hundred dollars ($67,275,500) par value of common stock, unless arrangements have been made for depositing hereunder (simultaneously with the issue of such increase of such stock) the same proportionate part of such increase of each class of stock as the stock of such class theretofore covered hereby was of the whole outstanding stock of such class as it existed before such increase, and the said Central Pacific Railway Company shall not be merged or consolidated with any other railroad company without the consent of the holders of a majority in amount of the bonds issued hereunder and then outstanding.

Eighth. While any of the bonds issued under this indenture
1527 are outstanding no new mortgage other than the first refunding mortgage and three and one-half per cent mortgage of the Central Pacific Railway Company dated August 1st, 1899, shall be made of the properties covered by such mortgages (except to refund

the first refunding mortgage bonds and three and one-half per cent mortgage bonds secured thereby or either of such issues), and the party of the first part agrees that, while any of the bonds issued under this indenture are outstanding, it will not, nor shall its successors or assigns, vote the stocks pledged hereunder or permit the same to be voted in favor of any new mortgage except as aforesaid, nor as owner of such deposited stocks will it assent thereto.

Ninth. The existing lease of the properties of the Central Pacific Railway Company to the party of the first part shall terminate in case the pledged stocks above referred to shall be sold under the provisions of this indenture in reference to the sale of such stocks in consequence of default of the party of the first part hereunder; and while any bonds are outstanding hereunder the party of the first part will not as the owner of such pledged stocks vote for or assent to

any other lease of such properties, unless such lease shall have

1528 been approved by the holders of a majority in amount of the bonds outstanding hereunder, or shall contain a provision terminating the same in case such pledged stocks shall be so sold.

Tenth. In case default shall be made in the payment of the principal or interest of any of the bonds authenticated hereunder and intended to be secured hereby, and such default shall continue for six months, or in case of default under the provisions of article eighth hereof, then and in that event, and while such default shall thereafter continue, the party of the second part, or its successors in this trust, shall be entitled to transfer the deposited stock into its own name and to receive (when and as the same shall be paid) all amounts which may from time to time be paid on account of dividends upon the stock pledged hereunder or otherwise in respect thereof, and shall be entitled to exercise the voting power thereon, and otherwise exercise the rights, powers, and privileges of a holder of such stock and shall be entitled to take any and all proceedings which the party of the second part, or its successors in this trust, may deem requisite for the protection of its or their rights and interests under or in respect of the said stock.

1529 Eleventh. In case default shall be made in the payment of the principal or interest of the bonds authenticated hereunder and intended to be secured hereby, and such default shall continue for six months, or in case of default under the provisions of article eighth hereof, then and in that event the party of the second part and its successors in this trust, is and are hereby authorized and empowered, at the request of the holders of one-fourth in amount of the said bonds then outstanding, to resort to any proceedings, legal or equitable, that may be deemed necessary or expedient for the enforcement of the lien hereby created upon all or any part of the preferred or common stock pledged under the provisions of this

trust. All moneys collected under the provisions of this or the preceding article of this indenture shall be applied in the manner provided in the next article of this indenture.

Twelfth. It shall also be lawful for the said party of the second part and its successors in this trust, in case default shall be made as aforesaid by the party of the first part and continued as aforesaid, upon like request of the holders of one-fourth in amount of the bonds issued and authenticated under the provisions of this indenture then outstanding (such default still continuing), to sell
1530 at public sale in the city of New York (after advertising notice of the time and place of such sale not less than once a week for six consecutive weeks in one or more daily newspapers published in the said city of New York) all the stocks hereby pledged which shall then be in its or their possession as trustee or trustees under the provisions hereof, or such portions thereof as may be necessary to pay the outstanding bonds of the party of the first part or its successors secured hereby, and all arrears of interest thereon, and all expenses attending as well the execution of this trust as the said sale, and any other costs and charges that may be necessarily incurred in consequence of such sale; such sale to be made in such lots or parcels as the party of the second part, or its successors in trust, may deem most beneficial. The party of the second part, or its successors in trust, may adjourn the sale of the whole or any part of the said stock from time to time in its or their discretion, and may make sale thereof at such adjourned date without further advertisement, and may make all necessary deliveries and transfers to the purchaser or purchasers, discharged from all and every the trusts hereby created, and without liability on the part of the pur-
1531 chaser or purchasers to see to the application of the purchase money.

After deducting from the proceeds of such sale or sales the costs and expenses thereof, or which may have been necessarily incurred thereby, and sufficient moneys to indemnify itself or themselves for all advances which may have been made, and against all liabilities which may have been incurred, in the execution of this trust, as well as a reasonable compensation for its or their own services, the said party of the second part, or its successors in the trust, shall apply the residue of the said proceeds, or so much thereof as may be necessary, to or towards the payment and discharge, with pro rata equality, of the principal and interest which shall then be due and unpaid upon all and singular of the said bonds issued by the party of the first part or its successors hereunder, and then remaining outstanding and unpaid, and without preference of interest over principal or principal over interest, and so that no priority or

preference shall be given to any bond which shall have been issued under and be secured by this indenture, and be then due and outstanding over any other bond so issued and secured; and if any surplus of such moneys shall thereafter remain, then the said
1532 party of the second part, or its successors in trust, shall pay over such balance of the trust funds in its or their hands, and transfer and assign any residue of the trust estate or property unto the said party of the first part, its successors or assigns. Any and every sale of preferred or common stock made pursuant to the foregoing power shall absolutely bar and foreclose all right, interest, and equity of redemption of the party of the first part, or its successors or assigns, in or to the stock so sold; and it is hereby expressly understood and agreed that in the event of any sale of the pledged stock pursuant to the provisions of this article, the party of the second part, or its successors in this trust, may declare the principal of all the bonds issued by the party of the first part, or its successors hereunder, and then unpaid and outstanding, to be due and payable forthwith, and thereupon the same shall become immediately due and payable, anything in the said bonds contained to the contrary thereof notwithstanding. And if it shall occur that after the exhaustion of all the stock hereby pledged as a security for the payment of the said bonds, or which shall be subject to the provisions of this trust, there shall be a deficiency in the payment of
1533 the principal or interest due on any of the bonds issued and authenticated under this indenture, then the party of the first part and its successors shall remain liable for the payment of such deficiency, and the said party of the second part and its successors in this trust is, and are hereby, authorized to take such further proceedings in law or equity as it or they may be advised to recover the same.

Thirteenth. In case default shall be made in the payment of the principal or interest of any of the bonds authenticated hereunder and intended to be secured hereby, and such default shall continue for six months, then and in that event, upon the written request of the holders of one-fourth in amount of the bonds hereby secured and then outstanding, the party of the second part, by notice in writing delivered to the party of the first part, shall declare the principal of all bonds hereby secured and then outstanding to be due and payable immediately; and upon any such declaration the same shall become and be due and payable immediately, anything in this indenture or in said bonds contained to the contrary notwithstanding. This provision, however, is subject to the condition that at any time after the principal of said bonds shall have been so declared to be due and payable and prior to the sale of the stock
1534 pledged hereunder the holders of a majority in amount of the

bonds hereby secured and then outstanding, by written notice to the party of the first part and to the party of the second part, may rescind and annul such declaration and its consequences; but no such rescission and annulment shall extend to or shall affect any subsequent default or impair any right consequent thereon.

Fourteenth. The party of the first part from time to time will pay and discharge all taxes, assessments, and governmental charges lawfully imposed upon the shares of stock at any time pledged hereunder and subject to the lien hereof, or upon any part thereof, or upon the income and profits thereof, the lien of which upon such shares would be prior to the lien hereof, so that the priority of this indenture shall be fully preserved in respect of such shares; provided, however, that nothing contained in this section shall require the party of the first part to pay any such tax, assessment, or charge so long as the party of the first part in good faith shall contest the validity thereof.

Fifteenth. The party of the first part agrees to use its best efforts to maintain and preserve the corporate existence of the Central
1535 Pacific Railway Company; and for such purposes it may from time to time sell, assign, transfer, and deliver so many shares of the stock of said company as may be necessary to qualify persons to act as directors of, or in any other official relation to, said company.

Sixteenth. In case of dissolution of the party of the first part or the sale of its properties or reorganization of its affairs the deposited stocks may be dealt with and disposed of in such manner as may be agreed upon by the party of the first part, its successors or assigns, and the trustee hereunder, or by the party of the first part, its successors or assigns, and the holders of a majority in amount of the bonds then outstanding hereunder and secured hereby; but all fruits and proceeds of such dealing with or disposition of said deposited stocks shall be held by the Trustee hereunder subject to the terms and conditions hereof; provided, however, that any assessments, contributions, or cash payments made in respect of such deposited stocks by or on behalf of the party of the first part, its successors or assigns, or the trustee hereunder or the holders of such bonds shall constitute a first charge prior to the lien of these presents upon such fruits or proceeds, and shall be forthwith repaid therefrom
1536 or from the sale of such portions thereof as may be requisite to provide for such repayment.

Seventeenth. In case of the resignation, insolvency, neglect, or incapacity to act of the said party of the second part or any successor in this trust the holders of a majority in interest of the bonds issued hereunder then outstanding may select or designate some other trust company or corporation authorized to hold and execute trusts of this nature, and the company or corporation so selected shall be thereupon entitled to receive and hold the pledged stocks belonging to this

trust upon the trusts herein mentioned and declared and shall have all the rights and powers and be subject to all the duties expressed in this indenture. In case of a failure of the bondholders to fill such vacancy in the manner above prescribed the president for the time being of the party of the first part or its successors shall make a temporary appointment for such vacancy, which shall continue until the holders of a majority in interest of said outstanding bonds shall have designated a new trustee to act hereunder. When holders of a majority in interest of the said outstanding bonds shall by an instrument in writing executed by themselves or their attorneys in fact

designate a new trustee under this indenture the estates,
1537 powers, rights, and privileges of any trustee hereunder under

any such temporary appointment shall immediately cease and determine and be transferred to and vest in the new trustee so designated, and such temporary trustee shall, upon request of the new trustee, execute and deliver any and all such assignments, transfers, or other instruments in writing as shall be requisite therefor, and thereafter such new trustee shall hold such estates, rights, powers, and privileges with like effect as if it had been designated as the party of the second part hereunder.

Eighteenth. Any and all costs, charges, and expenses incurred in or in respect of, or in connection with the execution of this trust by or on behalf of the said party of the second part, or its successors in this trust, or for which the said party of the second part, or its successors in this trust, shall be or become in anywise liable or responsible, shall be borne and defrayed by the said party of the first part, and said party of the first part undertakes, covenants, and agrees, for itself and its successors and assigns, that it and they will, upon demand, pay all such costs, charges, and expenses, including therein

just and reasonable compensation to said party of the second
1538 part, or its successors in this trust, for such services as it or

they may be called upon to render in or about or in respect of the trust hereby created.

Nineteenth. The party of the second part hereby accepts the trust created and declared by this indenture, and shall and will, at the request of the party of the first part or its successors, in accordance with the provisions of article third hereof, but not otherwise, certify the bonds intended to be hereby secured, and deliver the same to the party of the first part or its successors. But it is hereby expressly understood and agreed that neither the said party of the second part nor any successor in the trust hereby created shall incur any responsibility or liability whatever by reason of permitting or allowing the said party of the first part, or its successors or assigns, to exercise the rights, privileges, and authority hereinbefore reserved to said party of the first part, its successors or assigns, in regard to

stocks that now are, or may under the terms hereof become, subject hereto; and it is hereby further provided that neither the party of the second part nor any successor in the trust hereby created shall incur any responsibility or liability whatever, except for the
1539 negligent, willful, or intentional breaches by such trustee of the trust herein expressed and contained; and neither the said party of the second part nor any successor in this trust shall at any time be bound or required to undertake any proceeding at law or in equity, or otherwise, for the protection of the bondholders, involving expenditures of, or liability for, the payment of money, unless, if it shall see fit to require it, adequate indemnity against such liability or outlay be furnished by the bondholders asking such action or proceeding.

Twentieth. The said party of the first part shall from time to time execute any further instruments or assurances necessary or requisite to carry out the purposes hereof.

Twenty-first. Any request or other instrument required by this indenture to be signed and executed by bondholders may be in any number of concurrent instruments of similar tenor, and may be signed and executed by such bondholders in person or by agents appointed in writing. Proof of the execution of any such request or other instrument, or of a writing appointing any such agent, and of the holding by any person of coupon bonds transferable by delivery, shall be sufficient for any purpose of this indenture if made in the following manner:

1540 The fact and date of the execution by any person of any such request or other instrument of writing may be proved by the certificate of a notary public or other officer authorized to take acknowledgments of deeds to be recorded in the city of New York that the person signing such request or other instrument acknowledged to him the execution thereof, or by the affidavit of a witness of such execution. The amount of coupon bonds transferable by delivery held by any person executing any such request or other instrument as a bondholder, and the amounts and issue numbers of the bonds held by such person and the date of his holding the same, may be proved by a certificate executed by any trust company, bank, or bankers, or other depositary, wherever situated, if such certificate shall be deemed by the trustee to be satisfactory, showing that at the time therein mentioned such person had on deposit with such depositary the bonds therein described. The ownership of registered bonds, or of registered bonds without coupons, shall be proved by the company's registers of such bonds. Such proof shall be *prima facie* evidence in favor of the trustee with regard to any action by it taken under such request or other instrument. The bearer of any
1541 coupon bond hereby secured which at the time shall not be reg-

istered as hereinbefore authorized, and the bearer of any coupon for interest on any such bond, whether the same shall be registered or not, may be deemed and treated by the company and the trustee as the absolute owner of such bond or coupon, as the case may be, for the purpose of receiving payment thereof, and for all other purposes; and no notice to the contrary shall affect the company or the trustee.

Twenty-second. In case the trustee shall have proceeded to enforce any right under this indenture by foreclosure or otherwise, and such proceeding shall have been discontinued or abandoned because of any waiver or for any other reason, or shall have been determined adversely to the trustee, then and in every such case the party of the first part and the trustee shall be restored to their former position and rights hereunder in respect of the pledged stock, and all rights, remedies, and powers of the trustee shall continue as though no such proceedings had been taken.

Twenty-third. The company covenants and agrees that it will not, directly or indirectly, extend or assent to the extension of the time for payment of any coupon or claim for interest upon any bonds secured hereby, and that it will not, directly or indirectly, be a
1542 party to any arrangement therefor by purchasing or funding said coupons or claims for interest or registered bonds, or in any other manner. In case the payment of any such coupon or claim for interest should be so extended by or with the consent of the company, such coupon or claim for interest so extended shall not be entitled in case of default hereunder to the benefit or security of this indenture, except subject to the prior payment in full of the principal of all bonds issued hereunder and outstanding and of all coupons and claims for interest on such bonds the payment of which has not been so extended, the intention of this agreement being to prevent any accumulation after maturity of coupons or claims for interest upon registered bonds.

Twenty-fourth. The company will not at any time insist upon or plead, or in any manner whatever claim or take the benefit or advantage of, any stay or extension law now or at any time hereafter in force, nor will it claim, take, or insist on any benefit or advantage from any law now or hereafter in force providing for the valuation or appraisement of the pledged properties, or any part thereof, prior to any sale or sales thereof to be made pursuant to any provision herein contained or to the decree of any court of competent
1543 jurisdiction; nor after any such sale or sales will it claim or exercise any right under any statute enacted by any State to redeem the property so sold or any part thereof; and it hereby expressly waives all benefit and advantage of any such law or laws, and it covenants that it will not hinder, delay, or impede the exer-

tion of any power herein granted and delegated to the trustee, but that it will suffer and permit the execution of every such power as though no such law or laws had been made or enacted.

Twenty-fifth. No holder of any bond or coupon hereby secured shall have any right to institute any suit, action, or proceeding in equity or at law for the foreclosure of this indenture, or for the execution of any trust thereof, or for the appointment of a receiver, or for any other remedy hereunder, unless such holder previously shall have given to the trustee written notice of default hereunder and of the continuance thereof, as hereinbefore provided; nor unless, also, the holders of twenty-five per cent in amount of the bonds hereby secured then outstanding shall have made written request upon the trustee, and shall have afforded to it reasonable opportunity either to proceed to exercise the powers hereinbefore granted or to
1544 institute such action, suit, or proceeding in its own name; nor unless, also, they shall have offered to the trustee adequate security and indemnity against the costs, expenses, and liabilities to be incurred therein or thereby; and such notification, request, and offer of indemnity are hereby declared, in every such case, at the option of the trustee, to be conditions precedent to the execution of the powers and trusts of this indenture and to any action or cause of action for foreclosure or for the appointment of a receiver or for any other remedy hereunder; it being understood and intended that no one or more holders of bonds and coupons shall have any right in any manner whatever to affect, disturb, or prejudice the lien of this indenture by his or their action, or to enforce any right hereunder, except in the manner herein provided, and that all proceedings at law or in equity shall be instituted, had, and maintained in the manner herein provided, and for the equal benefit of all holders of such outstanding bonds and coupons.

Twenty-sixth. Except as herein expressly provided to the contrary, no remedy herein conferred upon or reserved to the trustee, or to the holders of bonds hereby secured, is intended to be exclusive of any other remedy, but each and every such remedy shall be
1545 cumulative, and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute.

Twenty-seventh. No delay or omission of the trustee, or of any holder of bonds hereby secured, to exercise any right or power accruing upon any default continuing as aforesaid shall impair any such right or power, or shall be construed to be a waiver of any such default or an acquiescence therein; and every power and remedy given hereunder to the trustee or to the bondholders may be exercised from time to time, and as often as may be deemed expedient, by the trustee, or by the bondholders severally and respectively.

Twenty-eighth. If the principal and interest of the bonds issued by the party of the first part, or its successors hereunder, and intended to be secured hereby, shall be paid to the holders thereof when and as the said principal and interest shall become due, according to the tenor and effect of the said bonds and in accordance with the provisions of this indenture, thereupon the trustee hereunder shall satisfy and discharge the lien of this indenture, and all the preferred and common stock hereby pledged or agreed to be pledged which shall then remain in the hands of the said trustee, and any residue
1546 of the trust estate or property, shall at once be transferred and delivered to the said party of the first part, its successors or assigns, and upon such transfer and delivery thereof the said trustee shall be thenceforth discharged from further duties under this trust.

In witness whereof the parties hereto have caused their respective corporate seals, attested by their respective secretaries or assistant secretaries, to be hereunto affixed, and these presents to be signed on their behalf by their respective presidents or vice presidents on the day and year first above written.

SOUTHERN PACIFIC COMPANY,
By THOS. H. HUBBARD,
Vice President.

[Seal of Southern Pacific Company.]
Attest:
I. E. GATES,
Asst. Secretary.

UNION TRUST COMPANY OF NEW YORK,
By EDWD. KING,
President.

[Seal of Union Trust Company.]
Attest:
J. V. B. THAYER,
Secretary.

1547 STATE OF NEW YORK,
City and County of New York, ss:

On this twenty-fifth day of September, in the year one thousand eight hundred and ninety-nine, before me personally appeared Thomas H. Hubbard and Isaac E. Gates, to me known, who, being by me severally duly sworn, did depose and say that they resided—the said Thomas H. Hubbard in the city of New York and the said Isaac E. Gates in the township of East Orange, county of Essex and State of New Jersey; that they are the vice president and assistant

secretary, respectively, of the Southern Pacific Company, the corporation described in and which executed the above instrument; that they knew the seal of said corporation; that the seal affixed to said instrument was such corporate seal; that it was so affixed by order of the board of directors of said corporation; and that they signed their names thereto by like order.

[Notarial seal.] GEO. H. COREY,
Notary Public, New York County.

1548 STATE OF NEW YORK,
City and County of New York, ss:

On this twenty-fifth day of September, in the year one thousand eight hundred and ninety-nine, before me personally appeared Edward King and J. V. B. Thayer, to me known, who, being by me severally duly sworn, did depose and say that they resided in the city of New York; that they are the president and secretary, respectively, of the Union Trust Company of New York, the corporation described in and which executed the above instrument; that they knew the seal of said corporation; that the seal affixed to said instrument was such corporate seal; that it was so affixed by order of the board of trustees of said corporation; and that they signed their names thereto by like order.

[Notarial seal.] GEO. H. COREY,
Notary Public, New York County.

2326 In the District Court of the United States for the District of Utah.

UNITED STATES OF AMERICA, PETITIONER, *vs.* SOUTHERN PACIFIC COMPANY ET AL., DEFENDANTS.	No. 3575 (420). In Equity.

To the clerk of said court:

I hereby certify that the above-entitled cause now pending in said court is a suit in equity brought by the United States against Southern Pacific Company et al., under the act of Congress entitled "An act to protect trade and commerce against unlawful restraints and monopolies," approved July 2, 1890; and that said suit is in my opinion a case of general public importance.

I therefore request that in conformity with the act of Congress approved February 11, 1903 (32 Stat., 823), as amended by the act of June 25, 1910 (36 Stat., 854), providing for the expedition of suits brought under the above-mentioned act of Congress of July 2, 1890, you will file this certificate among the records of the above-entitled cause, and immediately furnish a copy thereof to each of the circuit judges of the Eighth Circuit, to the end that said case shall be given precedence over others and in every way expedited, and be assigned for hearing at the earliest practicable date before not less than three judges of said circuit, as provided by the said act of February 11, 1903, as amended June 25, 1910.

2327 Washington, D. C., April 28, 1915.

T. W. GREGORY,
Attorney General.

Filed May 3, 1915.
JERROLD R. LETCHER,
Clerk.

2328 United States Circuit Court of Appeals, Eighth Circuit.

Hon. Willis Van Devanter, Circuit Justice, Washington, D. C.; Hon. Walter H. Sanborn, St. Paul, Minn.; Hon. William C. Hook, Leavenworth, Kans.; Hon. Elmer B. Adams, St. Louis, Mo.; Hon. Walter I. Smith, Council Bluffs, Iowa; Hon. John E. Carland, Washington, D. C., Circuit Judges.

ST. PAUL, MINN., *June 10, 1915.*

Hon. EDWARD F. MCCLENNAN,
Special Assistant to the Attorney General,
161 Devonshire St., Boston, Mass.

DEAR SIR: Your letter of June 7, 1915, has been received and submitted to the circuit judges. They will hear the case of United States *vs.* Southern Pacific Company and the Central Pacific Company at St. Louis on the first day of December, 1915. I return to

you the enclosed stipulation, for the hearing which you sent me. It should be filed with the clerk of the United States District Court at Utah together with the letter I send you fixing the date of the hearing.

Yours, truly,

WALTER H. SANBORN,
U. S. Circuit Judge.

Rec'd & lodged June 17/15. J. R. L.

2329 In the District Court of the United States, District of Utah.

UNITED STATES OF AMERICA, PETITIONER, *vs.* SOUTHERN PACIFIC COMPANY, CENTRAL PACIFIC RAILWAY COMPANY, et al., defendants. } In Equity No. 3573. No. 420.

For the Government: Mr. E. F. McClennen, special assistant to the Attorney General, and Mr. James W. Orr, special assistant to the Attorney General. The Attorney General, Mr. C. Carroll Todd, assistant to the Attorney General, and Mr. Edward E. Gann, special assistant to the Attorney General, were with him on the briefs.

For the defendants: Mr. Garrett McAnerny and Mr. Peter F. Dunne. Mr. J. P. Blair and Mr. Wm. F. Herrin were with them on the briefs. Mr. Perry D. Trafford filed a memorandum for the Union Trust Company of New York.

Before SANBORN, HOOK, and GARLAND, Circuit Judges.

HOOK, Circuit Judge, delivered the opinion of the court:

This is a suit by the United States to enjoin and dissolve an alleged monopoly and combination in restraint of trade and commerce formed by a lease to the Southern Pacific Company until January 1, 1984, of the railroads of the Central Pacific Railway Company, and by the acquisition by the former company of

2330 all the stock of the latter, in violation of the Sherman Anti-trust Act of July 2, 1890.

It is also charged that the control so obtained by the Southern Pacific Company is contrary to the Pacific Railroad acts of July 1, 1862 (12 Stat., 489), July 2, 1864 (13 Stat., 356), and June 20, 1870 (18 Stat., 111).

The needs of the case do not require a history in detail of the origin and growth of the various railroads which the Government regards as composing two independent systems that should be kept separate and competitive. It will be sufficient to refer generally to the two companies and their respective constituents and predecessors inclusively, as the Southern Pacific and the Central Pacific, and to speak more precisely only when necessary. We may say in the beginning that the location and physical interdependence of the lines of these companies in California and Oregon give the distinct appearance of a single system of railroads. So clearly is this so of the lines in California and Oregon north of Sacramento that when an attempt was made in 1913, in the matter of the dissolution of

combination of the Union Pacific and Southern Pacific, also to divorce the Central Pacific from the Southern Pacific, it was generally agreed they should be left with the latter company. It is equally clear as regards the Central Pacific and Southern Pacific lines in California south from Sacramento and San Francisco. Those of the Central Pacific appear on the map as natural links and parts of the Southern Pacific system. Practically all of the spurs, branches, and tributary feeders of the Central Pacific lines are the property of the Southern Pacific.

2331 It is only when we consider the Central Pacific line from San Francisco to Ogden, Utah, on the one hand, and the Southern Pacific main line from San Francisco through Yuma and El Paso to New Orleans on the other that the propriety of their common control seems in any degree debatable. This aspect of the railroad map is confirmed in great measure by the history of the construction of the various roads. The Central Pacific Railroad Company of California, the ancestor of the present Central Pacific, was incorporated in 1861. Up to 1870 it had constructed or acquired and put in operation the lines from San Francisco to Ogden, from Niles to San Jose in California, and from Roseville to Chico in the same state. The Southern Pacific Railroad Company was incorporated in 1865, and in 1870 the construction of the Southern Pacific lines was actively commenced. There was not much of importance of the Southern Pacific before that year. In 1870 and prior thereto the Central Pacific was dominated and controlled by Leland Stanford, Charles Crocker, C. P. Huntington, and Mark Hopkins, and in that year, if not earlier, the same group of men were in control of the Southern Pacific. For at least fifteen years thereafter and during the most important constructive period of the Southern Pacific a common control and dominance over both companies was exercised by them or the representatives of their estates. Parts of the lines of both companies were built by the same construction companies owned by Mr. Stanford and his associates, under the same superintendence and with the same equipment.

2332 The primary financing of the enterprise was done by them. The Central Pacific was employed as the principal or parent company and the Southern Pacific as its subsidiary, or rather as the corporate instrumentality for the expansion of its system. Except as to corporate title and bookkeeping there were generally the aspects of a single enterprise. In this respect the conditions were not unlike those which have characterized the growth of many of the important railroad systems of the country in which, for necessity or convenience of financing and in some instances because of local laws, separate corporate organizations were utilized. Between 1870 and 1883, as fast as the Southern Pacific lines were built from Goshen, California, the terminus of the Central Pacific, south to Los Angeles, thence eastward to Yuma and across Arizona and New Mexico and into Texas, they were turned over by completed sections to the Central Pacific for operation. Up to 1885 all the Southern

Pacific railroads, including the main line to New Orleans (with an unimportant exception), were officially announced, advertised and operated by the Central Pacific as part of its system. The legal relation between the two companies was expressed in executed leases, and the system was known as "Central Pacific Railroad and Leased Lines." In February, 1885, the Southern Pacific having become the major factor the relation was reversed, and the Central Pacific leased all its railroads to the Southern Pacific (Company of Kentucky) for ninety-nine years from April 1, 1885. The old leases of the Southern Pacific lines to the Central Pacific were surrendered by the same instrument.

2333 This was five years before the passage of the antitrust act.

In December, 1893, another lease from the Central Pacific to the Southern Pacific was executed, modifying the terms of the lease of 1885 in matters not important here, and though the older instrument was canceled in terms, in legal effect the relation of lessor and lessee continued unbroken. The term of this last lease is until January 1, 1984. Whatever immunity or exemption from the operation of the antitrust act attended the proprietary relations existing prior to its passage was not destroyed by the change in the position of the parties effected by the lease of 1885. Nor did the amendment of that lease in immaterial respects in 1893 create a new starting point. It is not material that the amendment was by a revision substituted for the old instrument instead of by a separate supplement. The applicability of the anti-trust act can not be made to rest on such considerations. It is also argued that the leases mentioned were not authorized by the statutes of California. We need not consider that. We do not think the antitrust act picks up the laws of the States for original enforcement. It deals with actual conditions affecting interstate commerce whether they are authorized by those laws or not. In the case before us there was from 1870 an existing, continuous, common control of the railroads of both companies created by leases executed and observed by the parties and unquestioned by the State. This was the situation when the Central Pacific debt to the United States was settled in 1899 pursuant to the act of July 7, 1898 (30 Stat., 659) and when the Southern

2334 Pacific acquired all the stock of the present Central Pacific which was then organized to succeed the old company.

In United States v. Union Pacific, 226 U. S., 61, 85, the court said:

"We take it therefore that it may be regarded as settled, applying the statute as construed in the decisions of this court, that a combination which places railroads engaged in interstate commerce in such relation as to create a single dominating control in one corporation whereby natural and existing competition in interstate commerce is unduly restricted or suppressed is within the condemnation of the act."

Prior to the stock acquisition in 1899 and since there never was a time in our opinion when there was in any real substantial sense "a

natural and existing competition in interstate commerce" between the Southern Pacific and the Central Pacific within the intent of the antitrust act. Prior to 1870 the Southern Pacific lines were a negligible factor as a competitor in such commerce, and thereafter the situation has been as we have described. That competition of the kind mentioned might now result from an enforced independence of the two companies and a separation of their railroads may be true, but we do not think the statute was intended to create competition by destroying a proprietary relation formed long before its passage and by the very means of which a railroad system has been brought into existence.

That the Southern Pacific control of the Central Pacific
2335 was not regarded as contrary to the statutes of the United States appears from the proceedings under the act of July 7, 1898 (30 Stat., 659). By that act a commission consisting of the Secretary of the Treasury, the Secretary of the Interior, and the Attorney General was appointed to settle the Central Pacific debt to the United States. The act provided that "any and all settlements" should be subject to the approval of the President. William McKinley was then President, and the other officials were Lyman J. Gage, Cornelius N. Bliss, and John W. Griggs. The settlement was effected as of February 1, 1899. At that time the Central Pacific debt to the United States for Government aid in the construction of the lines between Sacramento and Ogden and Sacramento and San Jose amounted to $58,812,715.48. More than half of this amount was accrued interest, and it was secured by a statutory lien on the two bond-aided lines subject to prior first mortgages. In addition the Central Pacific bonded debt then amounted to $57,471,000, most if not all of which was secured by first mortgages upon its various lines of road. It had outstanding $67,275,500 of stock. Before stating the details of the settlement the conditions in the light of which the statute authorizing it was passed may be briefly mentioned. Congress had been fully aware for many years of the relations between the Central Pacific and the Southern Pacific. As early as 1886 the President transmitted to the House of Representatives a copy of the lease of 1885, and from that time on the connection of the two companies was frequently the subject of
2336 official and legislative communications and reports. In February, 1890, a copy of the lease was laid before the Senate with the report of a committee in which it was said: "It is manifest from the terms of their lease that any bill for the adjustment and settlement of the debt of the Central Pacific Company must, in order to be efficacious, contain provisions by which this lease and the obligations of the Southern Pacific Company under it shall become security to the United States, and that the consent of the Southern Pacific Company shall be obtained to such provisions of the bill."

The committee was of the opinion that the existing security of the Government on the Central Pacific property was inadequate and that in case of foreclosure of the first mortgages the property would be

substantially exhausted in satisfying them. They reported that among the plans suggested to them was one "That all the associated lines forming the Southern Pacific Company (and these include the Central Pacific as consolidated) become parties" to 2 per cent bonds of the United States secured by a first lien upon the consolidated properties of all the lines. The above is but a small part of a continuous history of legislative efforts in the years preceding the act appointing the commission. Congress was fully informed of the lease and its terms, and that in any conventional settlement the Southern Pacific could not be ignored but had to be reckoned with. Agreement or litigation with the Southern Pacific were unavoidable alternatives, and the remedy by foreclosure of the statutory lien meant probable substantial loss. While the bills introduced in Con-
2337 gress to effect a direct legislative settlement did not pass, it does not appear that the failure was due to a definite opposition of that body to the relation between the two companies. But, however that may be, the whole situation in all its angles and complications was public history, and with definite knowledge of it Congress committed the settlement to the commission. The commission was given "full power to settle the indebtedness * * * upon such terms and in such manner as may be agreed upon by them, or by a majority of them, and the owners of said railroads." The power, however, was subject to the following limitations: The Government was to receive not less than the full amount of principal and interest due it; in equal semiannual installments; with interest not less than 3 per cent per annum, payable semiannually; "with such security as to said commission may seem expedient"; final payment and full discharge not to be postponed beyond ten years; all to become due upon default in any installment or interest; and if settlement was not perfected the President should proceed at once to foreclose.

No other conditions than these were prescribed.

An agreement of settlement as of February 1, 1899, was made and signed by the commissioners, the Central Pacific, and Messrs. Speyer & Co., who were managing the reorganization of that company. It was approved by the President. Contemporaneously with the consummation of the settlement the Central Pacific was reorganized under a plan that provided for a new Central Pacific company and its issue of $100,000,000 of first refunding 4 per cent mortgage bonds.

The plan also contemplated the guaranty of the bonds by
2338 the Southern Pacific and its acquisition of the stock of the new company. There was the same publicity of the details of this plan as generally attends the reorganization of important railroad systems, and the commission was advised of them in the early stages of its preparation. By the agreement of settlement the Central Pacific was to execute to the United States twenty promissory notes dated February 1, 1899, payable, respectively, on or before the expiration of each successive six months for ten years, each for the sum of $2,940,635.48, or one-twentieth of the total debt, and

bearing interest at 3 per cent per annum, payable semiannually. Each note contained a provision for the maturity of all upon partial default as provided in the act appointing the commission. The Central Pacific "or its successor company having title to the aforesaid railroads" was also to make an issue of 45-year 4 per cent gold bonds not exceeding $100,000,000 in all, secured by a first refunding mortgage upon all its railroads, whether bond aided or not, and all its equipment and terminals. The bonds were to be further secured by the guaranty of the Southern Pacific and were to be, as expressed in the agreement of settlement, "prior in lien to any lease of the railroads of said Central Pacific." Of these bonds, $58,820,000 were to be deposited with the Treasurer of the United States as security for the twenty installment notes. In addition, Speyer & Co., reorganization managers, were within one month after the execution and delivery of the notes, to purchase from the United States without recourse the four earliest maturing and pay therefor the
2339 face amount, $11,762,543.12, and accrued interest. A proportionate amount of the collateral mortgage bonds was to go with the four notes. The above constituted the security which seemed expedient to the commission within the authority conferred by the act of Congress.

The agreement of settlement was carried out in all its details. The lease to the Southern Pacific was subordinated to the mortgage securing the new first refunding bonds by an indenture executed by that company which recited as consideration "the benefits and advantages to be derived by said party of the first part (the Southern Pacific) from the carrying out of the agreement between the United States, the Central Pacific Railroad Company, and Messrs. Speyer & Co., dated February 1, 1899." On February 15, 1899, the commission reported to the House of Representatives. The report was in general terms and referred to the agreement of settlement a copy of which accompanied it. No reference to the guaranty of the Southern Pacific appeared in the report or the agreement, but the proof is convincing that the commission regarded it as a vital feature of a settlement. In the annual report of the Attorney General to the Senate and House of Representatives in November, 1899, the completion of the settlement was set out but the guaranty of the Southern Pacific was inadvertently stated as being upon the notes instead of upon the bonds securing them. With the exception of some credits which will be presently mentioned the notes held in the Treasury of the United States were paid by the checks of the Southern Pacific. That company charged the amounts to the
2340 Central Pacific upon their intercompany accounts.

The rule as to the persuasive force of an administrative construction of statutes is a familiar one and is frequently applied, but in the case before us there was more than the ordinary acts of public officers subject to legislative restraint. Here there was a commission composed of the very highest officials of the Government,

specially created and charged with the adjustment of a difficult and complicated business that had for years engaged the attention of Congress. Limitations upon their power and conditions to be observed were expressly set forth in the statute but none remotely suggesting any obstacle in the antitrust act. Except as to those limitations and conditions plenary power was given them. The relations between the Southern Pacific and the Central Pacific, long a matter of public history, naturally foreshadowed the engagement of the former in any adjustment of the financial condition of the latter; and additional considerations than affecting the other transcontinental railroad companies pointed the same way. So natural if not inevitable was the settlement that was made that the omission of limitations now urged is most significant. We do not say the commission was authorized to violate or to sanction the violation of the act of Congress, but the adjustment they effected necessarily involved the question of its pertinence to the business in hand. The acceptance of the guaranty of the Southern Pacific was a recognition that it had sufficient corporate interest in the Central Pacific to justify it. Without such interest its accommodation guaranty
2341 of $100,000,000 of bonds of another company would manifestly have been ultravires—a gross, indefensible excess of its corporate powers. Again, the acceptance of the guaranty implied a recognition of its possible, natural result, that is to say, the enforcement of the rights of a guarantor against the property of a debtor. The addition of the stock ownership by the Southern Pacific to its long leasehold interest did not so change the situation as to make unlawful what was not so before.

With knowledge of the settlement, and, it may be fairly presumed, of the details that were public history, Congress authorized the Secretary of the Treasury to dispose of "Any notes in his possession touching the indebtedness of the Central Pacific Railroad Company to the United States," act of March 3, 1899, 30 Stat., 1245. Further, by the act of March 3, 1901, 31 Stat., 1023, the Secretary of the Treasury was authorized and directed to settle claims for interest growing out of transportation services for the Government "over nonbond aided lines of the Southern Pacific Company and Central Pacific Railroad Company by crediting" the amounts upon the Central Pacific installment notes. This was done. The claims were just debts of the Government, and the legislative direction to credit them due the Southern Pacific upon the indebtedness of the Central Pacific was a recognition in some degree at least of a relationship between the two companies that justified it. There was no other warrant or authority than that which arose from the proprietary position of the Southern Pacific.

It is contended by both parties that the opinion and decision
2342 of the Supreme Court in United States v. Union Pacific supra, has a decisive bearing upon the case at bar. Aside from the controlling principles of law announced by the court and a matter

presently to be mentioned we do not think so. The Central Pacific was not a party to that suit, and though the relations between it and the Southern Pacific were mentioned in the opinion the references were not condemnatory, but were explanatory of the railroad situation and the movements of traffic. The court said, however, that nothing in its opinion should be considered as preventing the court below from approving or adopting a plan providing for the retention by the Union Pacific of the Central Pacific line from San Francisco to Ogden. There is a relevance here in the necessary inference that such retention by the Union Pacific would not have been regarded as contrary to the antitrust act. On the record then before the court it appeared that the Union Pacific already controlled the line from Portland, Oregon, to Granger, Wyoming, and was largely interested in the line from San Pedro, California, to Salt Lake City, Utah. The retention by the Union Pacific of the Central Pacific road from San Francisco to Ogden would have given the former company lines from the three important ports—Portland, San Francisco, and San Pedro—to connections with its main line in Utah and Wyoming. In corporate origin each of the three lines was separate and distinct from the others and from the Union Pacific in the same sense as the Southern Pacific and Central Pacific are corporately separate. With steamship connections with the Orient the three lines were theoretically at least competitors
2343 for foreign traffic destined through those ports eastward to the interior of the United States or to the Atlantic seaboard. But the control of all of them by the Union Pacific was evidently not deemed a suppression of competition sufficiently direct and appreciable to be repugnant to the antitrust act. The situation considered by the court in that case is not greatly different in its ultimate significance from the case at bar. If the antitrust act be construed to reach proprietary relations, as distinguished from those of a mere continuous operating character, formed long prior to its passage, whereby divergent or tangential lines of road to widely separated gateways or points in the currents of traffic movement are held in a single ownership or control, its enforcement accordingly would have such a destructive effect upon established, accepted railroad systems of the country that their inclusion within the intent of Congress may well be doubted.

After the decision of the Supreme Court that the combination of the Union Pacific and the Southern Pacific was unlawful, those companies, to meet the suggestions of the Attorney General, incorporated in the plan to dissolve the combination provisions for the surrender by the Southern Pacific to the Union Pacific of all the Central Pacific lines except one from northern California to the northern State line and a branch therefrom into Oregon. These provisions were in excess of the mandatory requirements of the Supreme Court and their consummation depended upon the approval of the Railroad Commission of California. Upon a consideration of them the commission expressed the belief that the

arrangement would "not substantially benefit the shippers of
2344 transcontinental freight either in rates or in service," and that it would be a distinct detriment to local commerce within the State. However, the commission made certain modifications and conditions as to features within its jurisdiction, but the railroad companies were unable to agree to them, and that part of the plan was abandoned. The failure to agree was followed by this suit to separate the Southern Pacific and Central Pacific, but we think the doubts of the California Commission would apply with equal force to the result now sought to be accomplished. It may be observed in this connection that this case of the Government, unlike others of similar character, finds little if any support in testimony from complaining shippers or the public generally.

Finally, it is contended that the control of the Central Pacific line from San Francisco to Ogden by the Southern Pacific is in violation of the Pacific Railroad acts. The proofs show no foundation in fact for this contention. When this suit was brought and since, the line was being maintained and operated in every particular required as a part of a continuous railroad from the Missouri River to the Pacific coast. In conjunction with the Union Pacific there were through rates, through billings and through freight, passenger and mail trains. There were no criticisms of the track, the service or the schedule. The Government and the public were being served adequately. Those statutes require physical connection with the Union Pacific to make a through line and the furnishing of
2345 equal advantages and facilities as to rates, time, and transportation without discrimination of any kind. If those requirements are met it does not seem material whether they are performed by the Southern Pacific as lessee and stockholder or by the Central Pacific independently.

The petition is dismissed.

Filed March 9, 1917.

JOHN W. CHRISTY, *Clerk.*

2346 CARLAND, C. J., dissenting.

It is difficult to determine from the opinion of the majority exactly upon what ground or grounds the bill in this case is dismissed. The opinion states that: "Prior to the stock acquisition in 1899 and since there never was a time, in our opinion, when there was in any real substantial sense 'a natural and existing competition in interstate commerce' between the Southern Pacific and the Central Pacific within the intent of the antitrust act." * * * "That competition of the kind mentioned might now result from an enforced independence of the two companies and a separation of their railroads may be true, but we do not think the statute was intended to create competition by destroying a proprietary relation formed long before its passage and by the very means of which a railroad system has been brought into existence."

If the language first quoted means natural and existing competition in fact, then it is entirely consistent with the claim of counsel

for the United States, which is that no such competition existed or could exist by reason of the common control since 1899 of the Central Pacific by the Southern Pacific. If the language means that there could be no competition between the two railroad systems, then the language is inconsistent with the language which follows, wherein it seems to be conceded that but for the common control there would be competition. As the breaking up of an unlawful combination does not create natural competition, but simply removes the barriers which prevent the free flow of interstate com-
2347 merce, the concession that there might be competition if the combination was broken is also a concession that there is a natural competition which is suppressed by reason of the control of the Central Pacific by the Southern Pacific.

The combination which is complained of in this case is alleged to have originated in 1899 in the acquirement of all the stock of the Central Pacific by the Southern Pacific. The fact that prior to the passage of the antitrust law there had been a practical control of the Central Pacific by the Southern Pacific through a leasing arrangement in no way validates the present combination if it be unlawful.

Standard Oil Co. vs. United States, 221 U. S., 1; United States vs. American Tobacco Company, 221 U. S., 106; United States vs. Trans-Missouri Freight Association, 166 U. S., 290; United States vs. Delaware & Hudson Company, 213 U. S., 366; Philadelphia, Baltimore & Washington R. R. Co. vs. Schubert, 224 U. S., 603; Waters-Pierce Oil Company vs. Texas, 212 U. S., 86; United States vs. Kissel, 218 U. S., 601; Armour Packing Co. vs. United States, 209 U. S., 56.

There does not seem to be any conflict in the authorities upon this proposition. The evidence in the record, in my opinion, establishes beyond question that the Southern Pacific, extending from San Francisco Bay to New Orleans, with its steamship connection with New York, is a natural competitor of the Central Pacific, both as to California-Atlantic seaboard freight and Central and Western United States freight to and from California. A mere inspec-
2348 tion of the different routes over which interstate commerce is moved through the El Paso and Ogden gateways would seem to show that the two roads are natural competitors. If they are competitors, and the Southern Pacific, as it is admitted, controls the Central Pacific, it follows that the free flow of interstate commerce is restrained. United States vs. Union Pacific Railroad Co., 226 U. S., 61; Northern Securities Co. vs. United States, 193 U. S., 197.

I do not think the evidence shows that the Central Pacific and the Southern Pacific were created originally and have always continued to be one system. They have always been and are now operated as separate systems. The settlement by the United States of the debt of the Central Pacific in 1899 can not be held to estop the United States from insisting at this time that the combination between the two roads are in violation of the antitrust act. It is not remarkable that in the proceedings resulting in the settlement so far as they

appear of record the antitrust law was not referred to, as little attention was given in those days to the antitrust law of July 2, 1890.

Finally, I am unable to reconcile the decision of the Supreme Court in the case of the United States vs. Union Pacific Railroad Company, 226 U. S., 61, with the conclusion reached by the majority in this case. The Union Pacific and the Central Pacific constitute one transcontinental line from Omaha, Nebraska, to the Pacific coast.

Of course, it would not be objectionable for the Union Pacific
2349 to control the Central Pacific so far as anything in the record in this case is concerned, because it would simply be the same through line with no competition involved as between these two roads, but the Supreme Court held in the case cited that the control of the Southern Pacific by the Union Pacific was a combination in restraint of commerce that should be broken up.

In this case the Southern Pacific, which the Supreme Court held was in competition with the Union Pacific, controls the Central Pacific or another section of the through line from Omaha to the coast. How is the decree of the Supreme Court in the Union Pacific case to become effective with the competitor of the Union Pacific controlling the Central Pacific?

If it was unlawful for the Union Pacific, being one section of the through line, to control the Southern Pacific, why is it not unlawful for the Southern Pacific to control the other section of the through line? It is said in the opinion that there is no evidence of complaint by shippers of the alleged unlawful combination. The Attorney General in instituting this action represents the public, including shippers.

For these reasons, briefly stated, I dissent from the conclusion reached by the majority.

Filed March 9, 1917.

JOHN W. CHRISTY, *Clerk.*

2350 In the District Court of the United States, District of Utah.

UNITED STATES OF AMERICA, PETITIONER,
vs.
SOUTHERN PACIFIC COMPANY, CENTRAL PACIFIC RAILWAY COMPANY, et al.

No. 3575. In Equity (420) Decree.

Upon final hearing of this cause it is adjudged and decreed that the petition of the petitioner United States of America be dismissed for want of equity.

March 6, 1917.

WALTER H. SANBORN,
Circuit Judge.
WILLIAM C. HOOK,
Circuit Judge.

Received, filed, and entered in minute book on this 9th day of March, 1917.

JOHN W. CHRISTY, *Clerk.*

2351 District Court of the United States for the District of Utah.

UNITED STATES OF AMERICA, PETITIONER,
vs.
SOUTHERN PACIFIC COMPANY AND OTHERS, defendants.
} Equity No. 3575 (420).

Petition for appeal.

The United States of America, the petitioner, alleging itself to be aggrieved by the final decree in the above-entitled cause, entered therein on March 9, 1917, does hereby appeal to the Supreme Court of the United States from said decree, and from each and every part thereof, and for the reasons set forth in the assignment of errors which is filed herewith, and prays that this, its claim of appeal, may be allowed, and that a transcript of the record and proceedings and papers upon which said decree was made, duly authenticated, may be sent to said Supreme Court.

By its attorneys.

G. CARROLL TODD,
Assistant to the Attorney General.
JAMES W. ORR,
Special Assistant to the Attorney General.
EDWARD F. MCCLENNEN,
Special Assistant to the Attorney General.

Dated April 23, 1917.
Allowed April 23, 1917.

WALTER H. SANBORN,
United States Circuit Judge.

Filed May 1, 1917.

JOHN W. CHRISTY, *Clerk.*

2352 District Court of the United States for the District of Utah.

UNITED STATES OF AMERICA, PETITIONER,
vs.
SOUTHERN PACIFIC COMPANY AND OTHERS, defendants.
} Equity No. 3575 (420).

Assignment of errors.

The United States of America, the petitioner, assigns as the errors of the proceedings and final decree entered March 9, 1917, in the above-entitled cause, on which errors it will rely in the prosecution of its appeal from said decree, that a decree should not have been entered dismissing the petition, but that on the contrary a decree

should have been entered granting relief to the petitioner to dissolve the combination and monopoly complained of, and to prevent the further infraction of the Pacific Railroad laws, and for greater particularity the petitioner assigns that said errors were committed in failing in said proceedings and decree to give sufficient consideration and effect to the matters of law and matters of fact apparent in the record as follows, namely:

First. In February, 1899, when this combination was formed, the Central Pacific Railroad and the Southern Pacific Railroad were existing railroads naturally competitive for an enormous volume of interstate traffic and the combination between them unreasonably, directly, substantially and wholly prevented and destroyed
2353 competition between them, and continues to do so, and the combination artificially created a monopoly to the public injury.

Second. The Pacific Railroad laws imposed on the franchise of the Central Pacific Railroad and on the franchise of the Union Pacific Railroad the reciprocal duty of the one railroad not to discriminate against the other in favor of any other railroad, but to exert together in normal voluntary cooperation all the natural forces of a single railroad naturally competing with the parallel Southern Pacific Railroad, and the systematic and preconcerted discrimination which the Southern Pacific Company in operating the franchise of the Central Pacific Railroad has practiced against the Union Pacific Railroad in favor of the Southern Pacific Railroad is a violation of those laws; and this combination between the Southern Pacific Railroad and the Central Pacific Railroad furnishing the incentive of self interest to discriminate against the Central Pacific Railroad and the Union Pacific Railroad in favor of the Southern Pacific Railroad, and so to violate those laws, imposed on the Central Pacific Railroad an unreasonable and unlawful restraint to the injury of the public and to the defeat of the purpose of those laws, which was to create and develop three separate, competitive systems of railroad to the Pacific coast, with all the advantages that would come to the public from three railroads which were competitive.

Third. The payment by the Central Pacific Railroad Company of its debt to the United States, and the transactions leading thereto, did not exempt the Southern Pacific Company from the
2354 provisions of the Sherman Anti-Trust Act of July 2, 1890, or permit that company to make a combination which otherwise would be one in restraint of trade, because (1) the settlement commission did not seek any guaranty by the Southern Pacific Company, (2) the contract of settlement did not require such a guaranty, (3) the United States received only payment of a debt already due and adequately secured, (4) neither the commission, nor the President, nor the Congress purported to give this company a special indulgence to make a combination in restraint of trade, prohibited as a crime by general law to all other corporations, and (5)

such a special indulgence or advance pardon is beyond the constitutional power of the commission, the President, and the Congress.

Fourth. The Central Pacific Railroad and the Southern Pacific Railroad were never, prior to February 20, 1899, a single railroad or system, but, on the contrary, were always two distinct railroads; (1) separately projected by separate and unrelated groups of men; (2) separately aided by gifts of public lands and loans of the public credit under acts of Congress to promote these two separate, competitive systems of railroad between the Atlantic Ocean and the Central United States on the east and the Pacific Ocean on the west, and enacted prior to 1867 and before any person interested in the one railroad was interested in the other; (3) separately owned by separate corporations organized by separate groups of men; (4) separately constructed at the expense of and for these separate
2355 corporations; (5) separately leased by these separate corporations under separate leases, making the amount of rent dependent on the net earnings of the separate railroads; (6) separately controlled by boards of directors, some of whom were always diverse, and a majority of whom were diverse in all but five years between 1865 and 1899; and (7) separately stock-owned, always to a substantial extent, and from 1883 to 1899 to the extent of more than a majority of the capital stock in each separate corporation, held by widely scattered stockholders in the United States and in Europe.

Fifth. The Southern Pacific Company on February 20, 1899, had no contractual, or property, or vested interest, direct or indirect, in the Central Pacific Railroad, because (1) the purported lease of February 17, 1885, by the Central Pacific Railroad Company was void for lack of power in that company to make it, both under the laws of California, and under the laws of the United States, the sovereignty from which it derived its franchises; (2) in 1893 this lease was cancelled and the new purported lease then given was equally void for the same reason; and (3) the leasehold interest was subject to immediate desctruction by the foreclosure of the underlying lien of the United States.

Sixth. Even if the Southern Pacific Company had had some control over the Central Pacific Railroad before the Sherman Anti-Trust Act was passed, this would not render lawful a combination for
2356 the increase and perpetuation of that control, formed after this act as passed.

By its attorneys.

G. CARROLL TODD,
Assistant to the Attorney General.
JAMES W. ORR,
Special Assistant to the Attorney General.
EDWARD F. MCCLENNEN,
Special Assistant to the Attorney General.

Filed May 1, 1917.

JOHN W. CHRISTY, *Clerk.*

2357 District Court of the United States for the District of Utah.

UNITED STATES OF AMERICA,
vs.
SOUTHERN PACIFIC COMPANY and others. In Equity. No. (420) 3575.

Order of enlargement of time for docketing case and filing record.

For good cause shown, it is ordered that the time for docketing this case and filing the record thereof with the clerk of the Supreme Court be enlarged to June 1st, 1917.

WALTER H. SANBORN,
United States Circuit Judge.

APRIL 23, 1917.

The appellees consent to the entry of the foregoing order.

J. P. BLAIR,
Attorney for appellees other than Union Trust Company.
MILLER, KING, LANE & TRAFFORD,
Attorneys for appellee Union Trust Co. of N. Y.

Filed May 1, 1917.

JOHN W. CHRISTY, *Clerk.*

2358 District Court of the United States for the District of Utah.

UNITED STATES OF AMERICA,
vs.
SOUTHERN PACIFIC COMPANY AND OTHERS. | In Equity. No. 3575 (420).

Order of enlargement of time for docketing case and filing record.

For good cause shown, it is ordered that the time for docketing this case and filing the record thereof with the clerk of the Supreme Court be enlarged to August 1st, 1917.

WALTER H. SANBORN,
United States Circuit Judge.

The appellees consent to the entry of the foregoing order.

J. P. BLAIR,
Attorney for appellees other than Union Trust Company of New York.
MILLER, KING, LANE & TRAFFORD,
Attorneys for appellee,
Union Trust Company of New York.

Filed and entered May 21, 1917,

JOHN W. CHRISTY, *Clerk.*

2359 In the District Court of the United States for the District of Utah.

UNITED STATES OF AMERICA, *vs.* SOUTHERN PACIFIC COMPANY ET AL.	In Equity. No. 3575 (420).

Order of enlargement of time for filing of præcipe by appellees.

For good cause shown it is ordered that the time within which appellees, should they or their solicitors desire additional portions of the record incorporated into the transcript for filing with the clerk of the court their præcipe, be enlarged to June 27, 1917.

WALTER H. SANBORN,
United States Circuit Judge.

Appellant consents to the entry of the foregoing order.

EDWARD F. MCCLENNEN,
Special assistant to the Attorney General,
Solicitor for appellant, the United States of America.

WM. F. HERRIN,
Solicitor for appellees, Southern Pacific Company et al.

United States District Court, District of Utah.
Filed June 16, 1917.

JOHN W. CHRISTY, *Clerk.*
By WILLIAM HORNBEAK, *Deputy Clerk.*

2360 District Court of the United States for the District of Utah.

UNITED STATES OF AMERICA, *v.* SOUTHERN PACIFIC COMPANY ET AL.	In Equity. No. 420.

Order approving condensed statement of evidence.

On the request of the petitioner, appellant, and with the consent of the defendants, appellees, the following condensed statement of the evidence, together with all the exhibits, constituting printed pages twelve hundred twenty-three (1223) to twenty-three hundred twenty-five (2325), inclusive, of the printed record, is hereby approved as a condensed statement of all the evidence introduced in this case.

Dated June 23, 1917.

(Sgd) WALTER H. SANBORN,
Senior U. S. Circuit Judge.

2363 *Certificate of clerk to transcript of record.*

UNITED STATES OF AMERICA,
District of Utah, ss:

I, John W. Christy, clerk of the District Court of the United States for the District of Utah, do hereby certify that the foregoing pages I to X, inclusive, indexes of printed record, pages 1 to 82, inclusive of the printed record, the following 35 pages, and following those, 18 pages of indices to the condensed statement, and following that, pages 1 to 793 of the condensed statement, after which follows pages 1223 to 2325 of the printed record, being exhibits, after which follows copy of præcipe and original citation, contain a full, true, and complete copy and transcript of the papers filed and proceedings entered of record in said court in that certain cause numbered 3575 (420) in equity on the dockets thereof, wherein the United States of America is complainant and the Southern Pacific Company, and others, are defendants, with the exception of the following papers and record entries not called for by the præcipe, and therefore omitted, to wit:

Feb. 11, 14. Petition for and order for service on nonresident defendants.
Subpœna in equity.
14, 14. Return of subpœna served on S. P. & C. P. Cos.
20, 14. Return subpœna served on Wm. Sproule.
23, 14. Return subpœna served on defts. in New York.
Mch. 2, 14. Appearance of S. P. Co. and all defts. except Union Trust Company.
Stipulation giving defts. to Apl. 11, 1914, to answer.
Order on same.
4, 14. Appearance of Union Trust Company.
6, 14. Return served of subpœna served on Huntington.
Apl. 8, 14. Stipulation extending time to answer.
Apr. 8, 14. Order on stipulation extending time to answer.
Jul. 6, 14. Appearance of E. F. McClennen for plaintiff.
Jun. 10, 15. Stipulation to assign cause for argument.
Jul. 6, 15. Original report of Special Examiner and exhibits.
Deposition of A. H. Pratt.
Nov. 1, 15. Stipulation to transmit original papers to St. Louis and order on same.
Mch. 9, 17. Judgment roll.
May 8, 17. Proposed condensed statement lodged with clerk.

as full, true, and complete as the originals of the same remain on file and of record in my office.

I further certify that the original citation is hereunto annexed and returned to the Supreme Court of the United States, together with the aforesaid transcript of the record in this cause.

In witness whereof, I have hereunto set my official signature and affixed the seal of said court at Salt Lake City, in said district, on this 12th day of July, in the year of our Lord one thousand nine

hundred and seventeen and the one hundred and forty-second of the Independence of the United States of America.

JOHN W. CHRISTY, *Clerk*,
United States District Court, District of Utah.

2364 Supreme Court of the United States.

No. 21. October Term, 1920.

THE UNITED STATES OF AMERICA, APPELLANT,
vs.
SOUTHERN PACIFIC COMPANY, CENTRAL PACIFIC RAILWAY COMPANY, Union Trust Company of New York, et al.

It is hereby stipulated and agreed by and between counsel for the parties in the above-entitled cause that the certified record filed in this case need not be printed, but that the case may be heard on the record as already printed contained in six volumes paged from 1 to 2325, inclusive, copies of which will be furnished by the parties. In addition to the record already printed, the orders of the court below, opinions, final decree, and appeal papers are to be printed from the certified record and added to volume 6 of the record already in print.

WM. L. FRIERSON,
Solicitor General.
A. A. HOEHLING, Jr.,
Counsel for Appellees.
de F. & Co.

2365 (Endorsement:) File No. 26050. Supreme Court U. S. October term, 1920. Term No. 21. The United States, app't., vs. Southern Pacific Co. et al. Stipulation as to record. Filed Sept. 3, 1920.

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IN THE

Supreme Court of the United States.

OCTOBER TERM, 1920.

UNITED STATES OF AMERICA,
Appellant,

vs.

SOUTHERN PACIFIC COMPANY, ET AL.,
Appellees.

SUPPLEMENTAL BRIEF ON BEHALF OF APPELLEES.

JOSEPH PAXTON BLAIR,
Of Counsel.

WILLIAM F. HERRIN,
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JOSEPH PAXTON BLAIR,
Counsel for Appellees.

The Evening Post Job Printing Office, Inc., 154 Fulton St., N. Y.

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Outline of Argument.

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PART I. The case under the Anti-Trust Act of July 2nd, 1890 2–5

This argument is supplemental to the main brief and argument and is not intended to cover the whole case. Its central theme is the case of the *United States* vs. *Union Pacific, Southern Pacific, et al.*, 226 U. S. 61. Attention is thus focused upon the Unmerger Suit not only for the purpose of showing to what extent the issues in the present case are controlled or affected by the decision in the former case, but because a discussion of the distinguishing features of the two cases will present some of the main defenses relied on in the present case in the contrasting light of the facts of the former case.....

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Under this heading the charges, *i. e.*, alleged violations of the Anti-Trust Act, contained in the petition are enumerated (pp. 8-10), the charges which have been abandoned stated (pp. 10-13), the single surviving charge disclosed (pp. 13-14), and the narrow basis of the case indicated by a statement of the matters and things which the Government has made no attempt to prove and of the matters and things established by defendants' evidence which the Government has made no attempt to rebut (pp. 16-24). The Southern-Pacific-domination myth is exposed and the immateriality of certain ancient traffic agreements pointed out (pp. 21-23).

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The conclusion is reached that the case which the Government claims to be analogous to the Unmerger Case is one of an attack upon a railroad system because of the inclusion therein of a divergent stem forming, with other connections, a through route competitive with another through route formed by lines of the system, the Government regarding its case as one of *res ipsa loquitur*, requiring no proof either of destruction of competition or of injury to the public or of increase of competition or benefit to the public to follow from the disruption of the system (p. 25).

II. Effect on the Government's case of the report of the Interstate Commerce Commission upon the application of the Southern Pacific Company, under the Panama Canal Act Amendment to the Interstate Commerce Act, to be permitted to continue to operate the line of steamships which forms a part of the Sunset-Gulf Route, notwithstanding its ownership of a part of the all-rail route via Ogden 26–34

The Commission has found in effect that the continued ownership by the Southern Pacific Company of the Central Pacific line to Ogden and of the whole of the Sunset-Gulf route is in the interest of the public, to the advantage and convenience of commerce, and will not exclude, prevent or reduce competition, actual or possible.

The implications of the Panama Canal Act Amendment and of the acts of Congress permitting the Southern Pacific Railroad Company to construct and operate railroads from San Francisco to form links in two competing transcontinental lines are opposed to the proposition of law underlying the whole of the Government's case (pp. 32-33).

III. The defense based on the origin of the common control of the lines composing the Southern Pacific System and on the manner of the formation and development of that system..... 35–44

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IV. The Union Pacific Unmerger Case (United States vs. Union Pacific Railroad Company, Southern Pacific Company, et al., 226 U. S. 61)..... 45–122

It is proposed to show that the decision in the Unmerger Case affords no authority for a judgment against defendants in the present case, and that the Government secured the unmerger of the Union Pacific and Southern Pacific systems upon propositions of fact and of law the reverse of which it now relies on to bring about a disruption of the Southern Pacific system.

The argument under this heading includes an analysis of the pleadings in the Unmerger suit (pp. 45-57), an examination of the brief and argument of the Attorney-General (pp. 57-67), and a discussion of the opinion and decree of the Supreme Court (pp. 67-121).

An analysis of the pleadings shows that it was alleged by the Government and denied by defendants that at and prior to the merger there was active competition between the "Ogden route" and the "Sunset route" and that such competition was destroyed by the merger. It was likewise affirmed and denied that the two systems were competing in many other fields at the time they were merged, and that all such competition was eliminated by the merger.

An examination of the brief and argument shows that the existence *vel non* at the time of the merger in 1901 of competition for coast to coast traffic between the Ogden route and the "Sunset route" was treated by the Attorney-General as an important issue in the case, as well as the complete neutralization thereof by the merger of the two systems. The position of the Government involved allegation and proof that ownership by the Southern Pacific of the Central Pacific had not prevented active and effective competition between the Ogden route and the "Sunset route", and such was its contention, the

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Attorney-General claiming that this was established by overwhelming proof and that "there was the same incentive to active, energetic competition between these lines that there would have been had the Southern Pacific not owned the line between Ogden and San Francisco" (p. 59). It was further contended that this prior existing competition was destroyed by the merger, and the claim that such competition as previously existed between the two routes still continued was ridiculed (pp. 65-66).

In the discussion of the opinion and decree of the Supreme Court the objectionable features which led to the condemnation of the merger are stated (pp. 68-70), and the absence of each of such features from the common control of the Central Pacific and other Southern Pacific lines is pointed out (pp. 70-121). Attention is called to the fact that the combination involved in the former case was connected with other great combinations or attempted combinations, while the mis-called combination complained of in the present case took place nearly a half century ago and was followed by no absorption or acquisition of competing properties but only by gradual, normal growth and development.

Among the differentiating features of the present case are:

(*a*) The Southern Pacific system is not a combination between previously competing or even previously existing lines of railroad (pp. 70-81).

Before the "Sunset route" was *in esse* or *in posse* or *in prospectu*, the common control complained of existed (p. 78).

(*b*) There were lawful and justifying reasons for the formation and development of the Southern Pacific system. It had neither for its pur-

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pose nor effect the elimination of competition (pp. 81-97).

The situation at the time of the lease of 1885 and the purchase of the Central Pacific stock in 1899 is stated (pp. 91-93).

Incompetence and immateriality of testimony and documents adduced before committees of Congress in years long past are shown (pp. 93-95).

(*c*) The inclusion of the Central Pacific lines in one system with the other Southern Pacific lines has not prevented or created the power or a motive to prevent the only competition alleged to exist between them, *i. e.*, that involved in the competition between the Ogden and the Sunset routes (pp. 97-116).

(*d*) The separation of the Central Pacific lines from the Southern Pacific system would not benefit but would injure the public. And the Interstate Commerce Commission has in effect so found (pp. 116-121).

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The purpose of this argument, which again, on this branch of the case, is supplemental to the main brief and argument and is not intended to cover the whole case, is by a consideration of the pleadings and the general scope of the evidence to arrive at the precise question to be decided, and then to show that the Government's case essentially depends upon a construction of the statutes not justified by the plain meaning of the words used, not necessary to accomplish their purpose and, when subjected to the test of general application, productive of consequences obviously not intended—a construction, moreover, which remained concealed and unsuspected during thirty years notorious existence of conditions amounting to flagrant violation of the law, so construed, and was brought to light only in the search for grounds upon which to base the present divorce suit.

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An analysis of the petition, in the light of the Government's evidence, reduces the violation of the Pacific Railroad Acts relied on to the single charge of discrimination against the Ogden route in favor of the "Sunset route", which discrimination is based solely on the preferential solicitation for the "Sunset route" of some traffic which might otherwise have moved by the Ogden route. To this should be added, perhaps, the general contention that the greater interest of the Southern Pacific Company in securing certain traffic for the longer haul via the "Sunset route" of itself makes its ownership of the Central Pacific line a violation of the acts (pp. 133-136).

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The alleged violations of the Pacific Railroad Acts have not prevented the construction and maintenance of a through connection for the Union Pacific west of Ogden infinitely superior to the bond-aided line of the Central Pacific, and the establishment and maintenance of a mutually satisfactory through service under which the Ogden route has become the strongest and most successful of the all-rail transcontinental lines. The alleged antagonistic affiliations have not prevented the Southern Pacific from giving to the Union Pacific at Ogden more freight than it receives from that road, and have not prevented the Union Pacific from being the preferred connection of the Southern Pacific for by far the greater part of transcontinental traffic, a traffic sufficient in volume and value to create the strongest motive and inducement in the Southern Pacific to do everything required by the Pacific Railroad Acts.

The Southern Pacific's ownership of the Central Pacific and of the "Sunset route" has never empowered it to control the routing of traffic which may pass over either the "Sunset route" or the Ogden route. The recent advent of water carriers through the Panama Canal has had such a revolutionary effect upon Atlantic Seaboard territory traffic that the matter of the preferential solicitation of such traffic for the "Sunset route" is now of no practical or legal consequence.

The evidence holds out no promise of either an improvement in the through service or an increase in the through business over the Ogden route to result from the separation of the Central Pacific lines from the Southern Pacific system.

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II. **Provisions of the Pacific Railroad Acts imposing obligations upon the railroad companies subject thereto in respect to operation and use of their roads** 150–157

Preferential solicitation through some other junction or gateway than the one where connection is made with a Pacific Railroad Acts company is not a violation of the statutes, since such conduct does not break the continuity of the through line or lines described in the acts, does not interfere with the existence over such lines of equal and non-discriminatory rates, time schedules, and every other element of through service, and does not amount to a discrimination in any sense heretofore given that term, and certainly is not a discrimination by one member against or in favor of another member of the Pacific Railroad Acts family.

III. **The provisions of the Pacific Railroad Acts requiring the railroad companies authorized to construct the through line or lines from the Pacific to the Missouri River to accord each other equal and non-discriminatory facilities and advantages in respect to rates, time and transportation will not support a charge of discrimination against said through line in favor of an outside line** 158–164

IV. **The mere fact that the Southern Pacific Company to the extent and in the manner shown by the evidence preferentially solicits for its "Sunset Route" some traffic which might otherwise pass over the Central Pacific-Union Pacific Line does not constitute a violation of the Pacific Railroad Acts** 164–168

The construction contended for by the Government is unwarranted, because it extends the obligations of the statutes beyond the express requirements or anything reasonably to be implied therefrom and beyond what is necessary either to secure the use and operation of the

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lines for all purposes of travel and transportation, so far as the public and Government are concerned, as one continuous line or to secure impartiality and equality in respect to advantages and facilities afforded as to rates, time or transportation, even if impartiality or equality is to be determined with reference to such advantages and facilities afforded any other connection whatever (pp. 167-173).

The Government's contention considered in the light of the general law as it existed at the date of the Pacific Railroad Acts and of subsequent legislation relating to connecting railroads (pp. 173-178).

Effect of applying the Government's construction of the statutes to conditions contemplated or authorized therein (pp. 178-181).

When subjected to the test of general application the Government's contention leads to absurd consequences.

It is discredited by the report of the Pacific Railway Commission (pp. 184-187).

V. The pleadings, arguments and decision of the Court in the Union Pacific Unmerger Suit considered with reference to their bearing on the Pacific Railroad Acts 188-203

The Pacific Railroad Acts figured in the Unmerger Suit only in connection with the question, whether it was necessary for the Union Pacific to acquire the Central Pacific in order to insure a continuance of the fair treatment which it had always received. As the Government characterized the conduct of the Southern Pacific as fair treatment of the Central Pacific-Union Pacific lines, as the Union Pacific was not aware that it was, and had been since 1883, the victim of an unlawful discrimination, the Court did not have before it any argument in favor of or

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against the construction of the Pacific Railroad Acts which the Government now urges upon this Court, and did not decide in favor of the Government the question whether the Pacific Railroad Acts were violated by the relations existing between the Central Pacific and the Southern Pacific Company or by the preferential routing of certain traffic over the "Sunset route".

If, by reason of the fact that the Union Pacific dominated the defense of the Unmerger Suit and by reason of other circumstances adverted to in the argument, the Unmerger Suit left the Court under the impression that it would be satisfactory all around to turn over the Central Pacific to the Union Pacific, there is enough in the present record completely to obliterate any such impression.

There is, however, a fundamental inconsistency between the attitude of the Government in the two cases. In the former suit it was urged that the Union Pacific had always been treated fairly and had nothing to complain of under the operation of the Central Pacific by the Southern Pacific, and that the Pacific Railroad Acts insured a continuance of such treatment. In the present suit it is urged that the Union Pacific is being discriminated against under the operation of the Central Pacific by the Southern Pacific within the prohibition of the Pacific Railroad Acts. In one case the Acts were invoked as securing a continuance of conditions, which were approved of and characterized as constituting fair treatment of the Union Pacific. In the other case the Acts are invoked as prohibiting the same conditions, which are declared to constitute discrimination against the Union Pacific.

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CASES CITED.

The only cases cited are "Southern Pacific Company's ownership of Atlantic Steamship Lines", 43 Interstate Commerce Commission Reports, 168, which is discussed on pages 26-34; and the unmerger suit of United States *v.* Union Pacific Railroad Company *et al.*, 226 U. S. 61, to the discussion of which the whole of PART I of the brief is mainly devoted. It is again discussed in PART II, pages 188-203.

IN THE

Supreme Court of the United States.

UNITED STATES OF AMERICA, Appellant, v. SOUTHERN PACIFIC COMPANY, *et als.*, Appellees.	No. 21, October Term, 1920.

SUPPLEMENTAL BRIEF ON BEHALF OF DEFENDANTS DEALING PARTICULARLY WITH UNION PACIFIC-SOUTHERN PACIFIC UNMERGER CASE (226 U. S. 61), REPORT OF INTERSTATE COMMERCE COMMISSION ON APPLICATION OF SOUTHERN PACIFIC UNDER THE PANAMA CANAL ACT AMENDMENT, AND THE CASE UNDER THE PACIFIC RAILROAD ACTS.

PART I.

DISCUSSION OF THE CASE UNDER THE FEDERAL ANTI-TRUST ACT OF JULY 2, 1889.

This brief is to be regarded as supplemental to the main brief and argument for defendants. It is therefore not intended to cover the whole case. Its purpose, so far as relates to the case under the Federal Anti-Trust Act, is to take as its central theme the case of the *United States* vs. *Union Pacific Railroad Company, Southern Pacific Company, et als.* (226 U. S. 61), and to show to what extent the decision of the questions involved in this case may be regarded as predetermined, controlled or affected by the issues presented and decided in the opinion rendered in the former case. We shall refer to that case hereafter as the Unmerger Suit or Case.

Both the Government and defendants believe that the Unmerger Suit has an important bearing upon the present suit. Both sides will probably admit that but for the decree in the Unmerger Suit the present suit would not have been instituted. The Government regards the proceeding to disrupt the Southern Pacific System as the logical outcome of its successful effort to unmerge the Union Pacific and Southern Pacific systems. Defendants have shown by the testimony in this case that the idea of the Southern Pacific Company parting with its Central Pacific stock originated in the mind of the then Attorney-General as a

convenient method, through exchange of stock, of enabling the Union Pacific to dispose of its Southern Pacific stock. (II Vol., p. 782 ffg.) This idea grew upon the natural opposition of the Southern Pacific Company into the conviction that that Company must be dispossessed of its holdings by decree of court, under the mistaken theory that the union under one system of the Central Pacific lines and the other lines of the Southern Pacific System was of the same legal character and constituted the same kind of prohibited restraint of trade as the merger of the Union Pacific and Southern Pacific systems. The Government regards the decision in the Unmerger Case as authority for its contentions in the present case. Defendants take an entirely contrary view. They believe, moreover, that there are glaring inconsistencies in the contentions of the Government in the two suits. They have accordingly pleaded the record in the former suit as a bar and estoppel, and have offered the record, including the printed briefs of counsel for the Government, as conclusive evidence against the truth of the charge, so essential to the present case against defendants, that the ownership or control by the Southern Pacific Company of the Central Pacific lines was destructive of competition between the Sunset line and the line through Ogden formed by the line from San Francisco to Ogden, standing in the name of the Central Pacific Railway Company, in connection with the Union Pacific and its eastern connections.

For the reasons indicated and for an additional reason it is believed that a brief specially devoted to an analysis and discussion of the Unmerger Case will be worth while, the additional reason being that, in pointing out the differences between the two cases and the inconsistent contentions of the Government, in showing wherein the opinion in the former case does not support the Government and does help defendants in this case, many of the important points of our defense will be presented from a special point of view and with the advantage of contrast with the features of the other case.

A comparison between the two cases will bring out in special prominence the fundamental distinction between the merger of two independent, self-sufficient, previously competing railway systems and the organic union of lines of railway born of a common parentage, developed as parts of one whole, and so united and inter-dependent that a separation would leave each part crippled and capable of being operated only with impaired efficiency and at increased cost. A like contrast will be shown to exist in the matter of the element of competition. The charge in the earlier case was the destruction of competition previously existing in many fields between the two great systems concerned. In the present case, in the absence of any *status quo ante* of independent competitive existence, the charge is that, if the always existing common control had never existed, there might have been greater or more effective competition with a combination of the parts of the

Southern Pacific system under some different ownership; and that, if the common control were now terminated, the sum total of competition might be increased. Without waiving but insisting upon the defence that the alleged effect on potential competition is insufficient in law to show a cause of action, it will be shown in the discussion of the two cases that the allegation is not well founded in fact. In addition to the admission of record in the former suit and the uncontradicted evidence in this case to the effect that in the only field of competition concerned, that between the "Ogden route" and the "Sunset-Gulf route", there has always existed active and vigorous competition, the vigor and activity of which would not be increased by the proposed dismemberment of the Southern Pacific System, attention will be called to a report of the Interstate Commerce Commission, filed after the submission of this case in the Court below, in which the Commission declares that continued common ownership and operation of the line from San Francisco to Ogden, forming part of the "Ogden route", and of the steamship line from Galveston and New Orleans, forming part of the "Sunset-Gulf route" and essential to the integrity of that route, will have no harmful effect upon competition.

I. The Government's case as defined by its pleadings and as further restricted by the evidence.

Before comparing this case with the Unmerger Case we shall briefly discuss the Government's case now before the Court as disclosed by its pleadings and as further illumined by its evidence, especially in the light of what it has failed to prove or to attempt to prove. We shall thus get at the surviving issues in the case. We use the term "surviving issues", because many of the alleged violations of the statute have been abandoned, not expressly but by petitioner's failure to make any attempt to prove the facts upon which the charges are based. After the abandoned charges, inserted originally perhaps in ignorance of the facts, are eliminated, the case is reducible to practically one question, whether the fact that the Central Pacific line from San Francisco to Ogden forms part of a through line, in connection with the Union Pacific and eastern connections, which offers an alternative route for certain traffic with the through line owned by the Southern Pacific Company from San Francisco via El Paso and New Orleans or Galveston and thence by steamship to New York, makes the inclusion in one system of the Central Pacific lines and the lines composing the mixed rail and water line an undue and unreasonable restraint of trade within the condemnation of the law.

The petition starts out with a general charge that defendants are restraining and monopolizing, or attempting to monopolize, trade and commerce

in respect to transportation between the points afterwards mentioned, and that the individual defendants, as officers and agents of the Southern Pacific Company, are responsible for a continuance of the combination and monopolization complained of. Then follows the general description of the lines of railway and steamships controlled and operated by the Southern Pacific Company. The "Sunset route" is described as a joint rail and water route between New York City and the Pacific coast terminals in California and Oregon. This route is more accurately designated by defendants' witnesses as the "Sunset-Gulf route". The Southern Pacific Company's operation and control, by lease or stock ownership, of the lines composing this route are alleged. Mention is made of the Southern Pacific Company's ownership of a majority of the stock of the Pacific Mail Steamship Company and its consequent control of a line of steamships between San Francisco and Oriental points, and a line of steamships between San Francisco and Panama, the latter by means of connections at Panama forming part of a through line between San Francisco and New York. The lines of railway forming the Central Pacific Railway Company are stated; and reference is made to the ownership by the Southern Pacific Railroad Company of California of the line of railroad from the Rio Grande to Los Angeles and thence to San Francisco by the two routes, the Coast line and the west side San Joaquin

Valley line, its ownership of the roads leading up into Oregon, and its control of various railroad corporations in California, Oregon and New Mexico. The lease of the Central Pacific Railway and of the other lines above mentioned and their operation since 1885 by the Southern Pacific Company are alleged, as well as the Southern Pacific Company's ownership of the stock of the Central Pacific Railway Company.

These general and descriptive charges are followed by particular charges showing or intended to show facts and conditions in violation of the Anti-Trust Act.

(1) The Central Pacific, in connection with the Union Pacific and its eastern connections, is a "natural competitor" of the "Sunset route" of the Southern Pacific Company in the transportation of traffic between points on the Atlantic Seaboard and in the Middle West on the one hand and all points on the Pacific Coast, as well as points in the Orient, on the other.

(2) The Central Pacific connecting at Fresno with the Atchison, Topeka & Santa Fe Railway forms, with the connections of the Atchison, Topeka & Santa Fe, a route which is a natural competitor of the Southern Pacific Company and its connections for traffic between Tehama, Marysville, Sacramento, Oakland, San Francisco, San Jose, and many other points in Central and Northern California, on the

one hand, and points in Arizona, New Mexico, Texas and Louisiana on the other, including Phœnix, El Paso, San Antonio, Houston, Galveston and New Orleans.

(3) The through routes formed by Central Pacific connecting at San Francisco Bay with various steamship lines (those operating via Panama to and from Alaska, Hawaii, the Philippines and Asia) are natural competitors of the Southern Pacific Company and its water connections.

(4) The union between the Southern Pacific and the Central Pacific has possibly prevented the existence of two independent competitive lines between San Francisco and Portland. The line now under construction by the Central Pacific from Weed to a connection at Natron with the Southern Pacific Company's line thence to Ogden, might be extended to Portland or the Central Pacific might, in exchange for trackage rights given the Southern Pacific over the line between Tehama and the northern boundary line of California, obtain trackage rights over the Southern Pacific line between Natron and Portland.

(5) The line of the Central Pacific from Hazen to Mojave connects at Mojave with the Atchison, Topeka & Santa Fe, and with the connections of the Atchison, Topeka & Santa Fe forms a route which, with joint traffic or prorating arrangements, would

be a natural competitor of the Southern Pacific Company and its connections for traffic between points on the Central Pacific and tributary territory and points in Arizona, New Mexico, Texas and other Southern States, but by reason of joint control of the Southern Pacific and Central Pacific such through traffic arrangements have not been made.

(6) It is alleged that prior to 1885 the lines of the Central Pacific were operated in connection with the lines of the Union Pacific and its connections in competition with the lines of the Southern Pacific. Then, after setting forth the lease of February 17, 1885, and its amendments, the organization of the present Central Pacific in 1899, the acquisition of its stock by the Southern Pacific Company in 1899, the control of both companies by a single management, it is alleged that the purpose and effect of said acquisition of stock and lease was to prevent competition between the lines of the two companies. It is further alleged that the ownership by the Southern Pacific Company of the stock of the Central Pacific and its leases of the properties of that company and its domination, management and control thereof, constitute a combination in restraint of trade and a monopolization thereof.

No evidence was adduced by petitioner to explain or support charge (2), that a line in the name of the Central Pacific connecting at Fresno with the Santa Fe forms, with connections of the Santa Fe,

a through route which is a natural competitor of the Southern Pacific Company and its connections for traffic between points in Northern and Central California and points in Arizona, New Mexico, Texas and Louisiana. We might safely leave this unsupported charge to fall by its own weight. But the evidence shows that the Santa Fe, by its own lines or in connection with the lines of the Western Pacific and several electric lines, has access to the territory and effectively competes for the traffic in question. Moreover, the Santa Fe has access to all territory served by the Southern Pacific System (including Central Pacific lines) under arrangements for through rates and divisions which enable it to successfully compete with the Southern Pacific Company. (See testimony of Spence, Vol. III, pp. 1024-5, 1029-1030, 1045; of Chambers, Vol. III, pp. 942, 954 ffg., 984; of Kruttschnitt, Vol. II, p. 769.) Such being the state of the record on the facts, it is not worth while to combat the legal proposition, that a system of lines becomes a prohibited restraint of trade when it is possible to form from a part of the system and some outside line a through route which is a "natural competitor" of a through route formed by other parts of the system with other lines.

Charge (3) as to routes formed by Central Pacific at San Francisco with various steamship lines (those operating via Panama, to and from Alaska, Hawaii, the Philippines and Asia) being natural competitors of the Southern Pacific Company and its water connections, was apparently not deemed by petitioner of sufficient im-

portance to be explained or supported by any evidence. We have only the testimony of defendants' witnesses which shows that there is active competition for all business passing through the port of San Francisco, that such competition is not affected in any way by the union under one control of the Central Pacific and the other lines of the Southern Pacific, and that in respect to such business there is not even "natural" competition between the Central Pacific lines and the other lines of the Southern Pacific System. (See testimony of Schwerin, Vol. II, pp. 698 ffg., 703-4; of Spence, Vol. III, pp. 1106-7, and p. 1037.)

Charge (4) accusing the common control of the Central Pacific lines and the other Southern Pacific lines of possibly preventing the construction of an extension of the California and Oregon line of the Central Pacific to Portland and of an extension of the Oregon and California line of the Southern Pacific to San Francisco, is so devoid of merit that we might safely ignore it, as petitioner has done in the evidence taken by it. We cannot forbear, however, calling attention to the absurdity of making such a charge in respect to two lines which Congress required to be constructed to connect with each other and thereafter to be operated as one continuous line (Act of July 25, 1866, 14 Stat., 239, Sec. 7). It is also worth while to call attention to the very imperfect information which the charge under discussion discloses to have been possessed by the Department of Justice respecting the system it was seeking to disrupt. It finds fault with the union under

one control of lines which the former head of the Department had insisted should remain under a common control after the separation of the Central Pacific from the Southern Pacific Company. When he was trying to enforce the sale to the Union Pacific of the Central Pacific stock, Mr. Wickersham, then Attorney General, recognized the advantage and necessity of the Southern Pacific Company retaining a through line between Portland and San Francisco, made up in part of Central Pacific lines, and insisted that the Southern Pacific Company should retain, after the sale, the Central Pacific line from Tehama north. (See testimony of Kruttschnitt, Vol. II, pp. 754-5 and p. 789.)

Charge (5) in respect to the possibilities of a through line, to be formed by the Hazen-Mojave branch of the Central Pacific in connection with the Santa Fe, as a "natural competitor" of the Southern Pacific Company, was also wholly neglected by petitioner when taking its testimony. The branch is in part a narrow gauge road with traffic not sufficient to justify its reconstruction on a standard gauge. It offers no possibilities as a connection of the Santa Fe. It was constructed by the Southern Pacific Company and put in the name of the Central Pacific. The charge in question has no merit even as a makeweight. Even if the Southern Pacific Company had been guilty of adding to its system by constructing a line which might form a part of a good through line with the Santa Fe, this would not serve to eke out a case of prohibited restraint of trade.

By this process of elimination we find the surviving

charges to be those enumerated above as (1) and (6). They are essentially one charge, consisting of three propositions: (*a*) The line standing in the name of the Central Pacific, in connection with the Union Pacific and its Eastern connections (the "Ogden route"), is a "natural competitor" of the "Sunset route" for certain traffic. (*b*) Prior to 1885 the Central Pacific line was operated in connection with the Union Pacific in competition with the lines of the Southern Pacific Company, *i. e.*, the lines forming the "Sunset route" or "Sunset-Gulf route". (*c*) The lease of 1885 and the acquisition of the Central Pacific stock in 1899 had for their purpose and effect to destroy previously existing competition between the two through routes.

In the argument in the court below counsel for the Government took the position that the so-called combination attacked was that charged to have taken place in February, 1899, when the Southern Pacific Company acquired the stock of the Central Pacific Railway Company, and that the lease of February 17, 1885, which was referred to when the petition charged that "under that and subsequent leases and amendments the Southern Pacific has ever since controlled and operated said properties and the additions thereto", was to be treated as without effect because *ultra vires* and invalid under the laws of California. This belated attack, *extra petitionem*, upon the validity of the lease of 1885 has been met in our main brief. Without repeating what is there said we submit that, so far as the United States and the charges in this suit are concerned, that lease and its

amendments must be regarded as valid and effective, unless and until set aside as in violation of the Federal Anti-Trust Act of 1890. Hence, when the Southern Pacific Company in 1899, with the knowledge and consent, and, indeed, at the invitation of the United States, purchased the stock of the Central Pacific Railway Company, it was not only acquiring the ownership of lines of railway which had always been parts of its system, with reference to which its through lines had been constructed, and without which its system would be disrupted, but it was acquiring the stock of a company all of whose property it already had in its possession and control under a lease, made before the Anti-Trust Act was adopted, which still had eighty-five years to run. If that lease was not a prohibited restraint of trade, neither was the stock purchase. If the property was lawfully acquired prior to the Anti-Trust Act, discharging a prior lien to protect such lawfully acquired property is certainly not a violation of that law.

It is important to observe that the competition complained of as destroyed is that in one field of competition, namely, for traffic for which the Ogden route and the Sunset-Gulf route offer alternative routes. The evidence shows that this field is restricted territorially to Northern and Central California on the one hand and Atlantic Seaboard territory on the other, and is restricted by natural and physical conditions to traffic which will stand trans-shipment. The evidence further shows that the traffic, as thus restricted, is the most highly competitive of transcontinental traffic, both in

respect to the number of competitors and the fierceness of the struggle therefor. There is no evidence, however, to justify the contention that so much of the traffic in question as is secured for the Sunset-Gulf route represents traffic which has been "diverted", to the prejudice of the public, to a more expensive route with inferior service. The witnesses stated with practical unanimity that the Sunset-Gulf route, in respect to such traffic, was at least the equal in service, time and otherwise of any of the several all rail lines, including the Ogden route, competing for such business.

Having reduced the scope of the Government's case to the charge that the Southern Pacific System is an unlawful combination in restraint of trade because of the inclusion therein of a link in a through line which is competitive with another through route made up of system lines, we shall now show from the Government's evidence the very narrow grounds relied on as constituting the alleged unlawful restraint of trade. It is not intended to discuss the evidence in detail. A general statement of its scope and purpose will suffice.

Abundant evidence was introduced to prove the conceded fact, that the Ogden route and the Sunset-Gulf route afforded alternative routes for the movement of traffic between California and Atlantic Seaboard territory. As was to be expected, there was no evidence of any "natural" or other competition between the parts of the Southern Pacific System standing in the name of the Central Pacific and the other parts of the system, except such as might be said to result from the

fact that a Central Pacific line formed part of the Ogden route.

There was no attempt to prove that the natural, necessary or actual effect of the union in one system of the Central Pacific line to Ogden and the lines constituting the Sunset-Gulf route was to destroy competition between the two routes. On the contrary, the witnesses for the Government agreed with defendants' witnesses in declaring that at all times, except during the Union Pacific-Southern Pacific merger, there had been active, vigorous and effective competition between the two routes (Lincoln, I Vol., pp. 121, 123; Schumaker, *Id.*, pp. 148, 163-7, 173; Kruttschnitt, II Vol., pp. 732-4, 740; Spence, III Vol., pp. 1037-1039, 1045-1048; Chambers, *Id.*, pp. 950-952, 967-968, 983). The testimony of these witnesses, as will be shown hereafter, is in accord with the contentions successfully made by the United States in the Unmerger Suit, and with the findings of the Interstate Commerce Commission on an application by the Southern Pacific Company, under the Panama Canal Amendment Act, for permission to continue to operate the water line part of the Sunset-Gulf route notwithstanding that company's ownership of the Central Pacific line to Ogden.

There was no attempt to prove any effort on the part of the Southern Pacific Company to destroy or neutralize competition between the two routes.

There was no attempt to disprove the abundance of competent testimony adduced by defendants showing, not only the absence of any power, but the absence of

any motive or inducement for the Southern Pacific Company to eliminate or lessen competition between the two routes by impairment of service or otherwise, using service in its broadest meaning.

There was no attempt to meet or rebut the testimony of numerous witnesses for defendants who testified, with convincing details, that the public had always enjoyed the full benefit of competitive service over the two routes and that both routes were better and rendered more efficient and economical service by reason of the unified management which the Government alone complains of (*infra,* pp. 116-117). This testimony is not met by the declaration that it is a general rule that the more railroads the more competition and the more competition the better service. It is not worth while to consider whether there is any such general rule or whether the exceptions thereto are so numerous as to deprive the rule of any value. Mr. Schumacher, one of the Government's best informed witnesses, who announced the rule (I Vol., p. 156), declared it was not true in the present case (*Id.,* p. 157). Testimony of defendants' witnesses, which include Mr. Eshelman, representing the views of the Railroad Commission of California, and Mr. Lynch, representing the experience of the shipping public, declaring that the Southern Pacific System, with the Central Pacific lines included therein, had not lessened competition and that its dissolution would not only not increase competition but would injure the public in just the respects in which competition is supposed to benefit it, cannot be said to be met

by the testimony of three Union Pacific officials to the effect that, if the Central Pacific were independent, its soliciting organization would be added to the army of solicitors striving to secure traffic for the Ogden route. We believe the Court will agree with defendants' witnesses (*e. g.*, Mr. Spence, Vol. III, pp. 1038-9) that the sum total of competitive striving for the particular traffic in question would not be appreciably or beneficially increased by such an addition to the soliciting force. As it is, the Union Pacific and forty or fifty other lines have agents at both ends striving to secure traffic for the Ogden route, offering every inducement in the way of service, not only their own service *but the service over the Central Pacific line.* It cannot be said that the service on the western end of the Ogden route is not competitive service. On the contrary, competition has its full influence on this service. The enormous traffic which passes over the Ogden route is subject to the fiercest competition, and can be secured and held only by the maintenance of the best service on the line between Ogden and San Francisco. And it is this competitive service which the army of solicitors working for the Ogden route offer the public. A new solicitor for an independent Central Pacific could not offer any more. He could not offer as much; for the uncontradicted testimony is that the present service over the Ogden route between Ogden and San Francisco, made up as it is not only of lines in the name of the Central Pacific *but of lines and facilities belonging to the Southern Pacific Railroad Company,* is a better

service than one made up only of the lines and properties of the Central Pacific. We are, therefore, justified in stating that there was a complete failure on the part of the Government to show that the proposed dismemberment of the Southern Pacific System would be followed by any increase of competition or any benefit to the public, and that defendants have proved the contrary. Of course, the Court will bear in mind that competition for the traffic which may move over either the Ogden route or the Sunset-Gulf route is not confined to those two routes, and that loss of good will or of business consequent upon impairment of service over one of the routes would not necessarily or probably benefit the other route, but would certainly injure the Southern Pacific Company in respect to the far greater part of transcontinental traffic which the Sunset-Gulf route cannot compete for.

There was no attempt to convict the so-called combination of restraint of trade by reason of its treatment of competitors or by reason of injury done the public. Defendants, however, have shown by competent uncontradicted evidence that the interests and convenience of the public are against the proposed dissolution, and that accounts for the conspicuous absence from the Government's list of witnesses of any complaining shipper or traveler. No competitor appeared to rebut the testimony of defendants' witnesses showing that the policy of the Southern Pacific Company towards its connections had been to promote the exchange of traffic and to give access to its territory to

every connection. It turned over its line from Mojave to Needles to the Santa Fe, as soon as the latter reached the California boundary, and it voluntarily made such arrangements in respect to business north of Mojave that the Santa Fe became an effective competitor for Central California business long before it reached San Francisco over its own rails.

There was no attempt to prove the present existence of any monopolistic conditions or trade-restraining control as resulting from the so-called combination. We mention, simply to call attention to its immateriality, testimony to the effect that many years ago the only rail lines in California were those of the system now known as the Southern Pacific System. If it once occupied the field alone, it was because its lines were first constructed and not because it excluded or had the power to exclude others from the field. It is a point upon which the witnesses on both sides agree, that whatever domination or influence over traffic (and especially traffic between California and Atlantic Seaboard territory, with which we are specially concerned) which the Southern Pacific System ever possessed, has been for many years on the wane until now it has reached the vanishing point. There was no attempt to rebut the testimony of Mr. Spence, which was in line with the testimony of other witnesses (I Vol., p. 169), that the competition for transcontinental traffic has been gradually increasing and the proportional takings of the Southern Pacific had greatly diminished even before the opening of the Panama Canal, and that the entrance

upon the field of the water carriers through the Canal, the most powerful of all the competitors, *who compete for all the traffic which is competitive between the Ogden route and the Sunset-Gulf route,* has caused the dominating influence of the Southern Pacific Company, if it ever existed, to be numbered among the things that were (III Vol., pp. 1031-2).

We mention simply to dismiss as immaterial the several contracts between the transcontinental lines which were put in evidence by the Government. The latest of them terminated in 1892, more than twenty years prior to the institution of this suit. There is no likelihood that they will ever be renewed. They were not due to the miscalled combination complained of, and the dismemberment of the Southern Pacific System is not necessary to prevent their recurrence. They were joined in by all railroads concerned in transcontinental traffic. If the Central Pacific Railroad Company had had no connection at the time with the other lines of the Southern Pacific System, the agreements would have been entered into just the same. Such agreements or associations were then being formed by all the rail carriers of the country. They belong to a period in the history of American railroads when they were seeking, by contracts with each other, to bring about stability of rates, the abolition of secret rate cutting, etc. They became unnecessary with the enforcement, after necessary amendment, of the Interstate Commerce Act. They disappeared entirely after the decisions rendered by the Supreme Court in the *Trans-*

Missouri Freight Association and *Joint Traffic Association* cases.

For similar reasons the several contracts between the transcontinental railroads and the Pacific Mail Steamship Company, and between the Steamship Company and the Panama Railroad Company, are unimportant and immaterial to the issue, whether the Southern Pacific System, with the Central Pacific lines included therein, constitutes a prohibited restraint of trade. These contracts were not due to or in furtherance of the alleged combination or conspiracy complained of, and they have long ago ceased to exist. It is a matter of public notoriety that the Southern Pacific Company no longer has any interest in the Pacific Mail Steamship Company, and all that could have been accomplished by this suit in respect to the Pacific Mail has already been accomplished.

We do not believe that either set of contracts should cause the Court to impose one demerit mark against the otherwise perfect record of good conduct which may rightly be claimed for the system, once Central Pacific now Southern Pacific, during its whole lifetime of more than forty years.

Reduced to a last analysis the Government's case is one of an attack upon a railroad system because of the inclusion therein of a divergent stem, forming with other connections a through route competitive with another through route formed by other lines of the system (the formation of the system preceding the construction of one of the through routes), without proof

of any destruction of competition or of any injury to the public and without promise of any increase of competition or benefit to the public to follow the disruption of the system.

There accordingly rests upon the Government the burden of showing, among other things, either that every railway system having a divergent stem forming by its connections a through route competitive with the parent system is unlawful, or that the Southern Pacific System is within the condemnation of the law upon grounds peculiar to it and not generally applicable to railway systems having such divergent stems. Now it is true of all such systems that, other things being equal, freight is preferentially solicited for the 100% haul, and it may be charged against all such systems that, if the divergent stem were separated from the parent system and independently operated, another corporation and another soliciting agency would be added to the number working for the through line of which it forms a link. Assuming that the Government does not claim that all railroad systems with divergent stems are unlawful, it will not advance the case against the Southern Pacific System to show merely that, if its divergent stem were operated by an independent corporation, there would be an addition to the number of railroad corporations working for the Ogden route, an addition which the record shows would amount practically to nothing more than another soliciting agency added to the now nearly half hundred fighting for that route, and would involve a decided decrease in the efficiency of the

Ogden route and in its force as a competitive factor. The Government is under the necessity of showing that there is something in the origin of the Southern Pacific System or in the manner of its growth and development or in its effect on competition between the two through routes in question which amounts to a violation of the Federal Anti-Trust Act. This necessity, however, the Government does not admit or has been unable to meet. It presents its case as if it were one of *res ipsa loquitur*. It shows that the Ogden route and the Sunset-Gulf route are competitive routes and that a link in one and the whole of the other route are under a common control or ownership, and claims, as a conclusion of law, that such common control or ownership constitutes a prohibited restraint of trade, despite the fact that such common control antedates both the conception and the construction of the lines in question, despite the fact that the conditions complained of are not only common but inevitable in practically every railway system of the country, despite the uncontradicted evidence that competition between the two routes has not been prevented or restricted, despite its own admission to that effect in the Union Pacific Unmerger suit, and despite the fact that the Interstate Commerce Commission has sanctioned the common control as neither preventing, excluding nor reducing competition, actual or potential. And this brings us to a report of the Interstate Commerce Commission which has an important bearing on the issues of this case.

II. Effect on the Government's case of the favorable report of the Interstate Commerce Commission upon the application of the Southern Pacific Company, under the Panama Canal Act Amendment to the Interstate Commerce Act, to be permitted to continue to operate the line of steamships which forms a part of the Sunset-Gulf route, notwithstanding its ownership of a part of the all-rail route via Ogden.

After the close of the testimony and the submission of the case in the court below the Interstate Commerce Commission acted upon an application of the Southern Pacific Company, under the Panama Canal Act Amendment of Section 5 of the Interstate Commerce Act (37 Stat. L. 564), to be permitted to continue to own and operate its steamship line between the port of New York and the ports of New Orleans and Galveston. This application was filed in February, 1914, submitted June 1, 1916, and decided January 24, 1917.

The Commission found the existence of competition between the rail lines of the Southern Pacific and their connections via the Ogden gateway and via the El Paso gateway and the Sunset-Gulf route, of which the steamship line in question formed a part, and hence that the Southern Pacific Company's rail lines may and do compete with its steamship lines operating between New York and the two Gulf ports. It remained then for the Commission to determine the effect on competition between the Ogden route and the Sunset-Gulf route

of the ownership by the Southern Pacific Company of a part of the all-rail line and the whole of the rail and water line, including the steamship lines in question. The finding of that body of experts is a shattering blow to the contentions of the Government in the present case. Under the terms of the Panama Canal Act Amendment the Commission was authorized to permit the Southern Pacific Company to continue to own and operate the steamships only if it found that such water service was "being operated in the interest of the public and is of advantage to the convenience and commerce of the people, and that such extension (*i. e.*, permission to continue to own and operate) "will neither exclude, prevent, nor reduce competition on the route by water under consideration * * *". What competition? *Any* competition, including competition with the Ogden route, certainly, as well as competition through the El Paso gateway. The Commission granted the application of the Southern Pacific Company to be allowed to continue to own and operate the water part of its Sunset-Gulf route, and it necessarily and expressly decided that such operation and the ownership by the Southern Pacific Company of the rail and water line and, at the same time, of the link between Ogden and San Francisco of the all rail line was in the public interest, to the advantage of commerce, and did not exclude, prevent, nor reduce competition between the Ogden and Sunset-Gulf routes—not simply the actual, but any possible competition.

The report of the Commission, which bears date

January 24, 1917, will be found in the official volumes of the Commission's Reports, 43 I. C. C. 168, entitled "Southern Pacific Company's Ownership of Atlantic Steamship Lines". After explaining the rail system of the Southern Pacific Company and its connections, including the Ogden route, and the steamships operated by it, especially those forming part of the Sunset-Gulf route, the report states:

> "The record shows that the Southern Pacific Company's rail system and its rail connections form all-rail transcontinental routes via the El Paso gateway and via the Ogden gateway. The record also establishes that these all-rail routes engage in the 'most active and vigorous competition' with the Sunset-Gulf route and that the Southern Pacific Company, by its participation in the solicitation and carrying of traffic over these all-rail routes, actively competes with its Atlantic Steamship lines through both New Orleans and Galveston in their solicitation and carrying of traffic over the Sunset-Gulf route. We, therefore, find that the Southern Pacific Company's rail lines may and do compete with its Atlantic Steamship lines operating between New Orleans and New York and between Galveston and New York for through traffic. It follows that the time during which the petitioner may continue to operate or to have an interest in such service by water can not be extended by us, under the terms of the statute, unless the record shows that such extension will neither exclude, prevent, nor reduce competition on these routes by water and that the present operation is of advantage to the convenience and commerce of the people" (pp. 170-1).

After some discussion of water competition between the Gulf ports and New York, and after a very complimentary allusion to the character of the service maintained by the Southern Pacific Company and its universal endorsement (pp. 172-3), the Commission disapproved of certain practices in the port to port business, and then declared that the correction of those objectionable practices would leave no basis of record for withholding an order permitting the continued ownership and operation by the Southern Pacific Company of its steamship lines. The objectionable practices related to confining the benefit of a dry goods mixture rule to goods owned by one shipper and the practice of allowing shippers the benefit of the port to port rates in certain cases where the Commission thought the higher through rate should have been applied. These practices having been corrected by proper tariff amendments the Commission, at a general session held at its office in Washington, D. C., May 12, 1917, rendered an order in which it recited the application of the Southern Pacific Company under Section 5 of the Interstate Commerce Act, the investigation thereof by the Commission and its report thereon,

> "which said report contained findings that the petitioner's rail lines may and do compete with its Atlantic Steamship Lines operating between New York and New Orleans and between New York and Galveston, that under present conditions an extension of the time during which the petitioner may continue to operate or have an interest in

these steamship lines will neither exclude, prevent nor reduce competition on the routes by water, and that the correction of certain objectionable practices which were enumerated would leave no basis of record to justify the withholding of the requisite finding, under the act, that the existing service of these steamship lines between New York and New Orleans and between New York and Galveston is in the interest of the public and of advantage to the convenience and commerce of the people;

"*And it further appearing,* That the petitioner by the filing of appropriate tariffs now effective from New York, N. Y., and points in Atlantic seaboard territory to Galveston and interior Texas points has corrected the objectionable practices above referred to."

And thereupon it was ordered—

"That the application of the Southern Pacific Company for an extension of time beyond July 1, 1914, within which it may continue the operation of its Atlantic Steamship Lines between New York and New Orleans and between New York and Galveston be, and it is hereby, granted, subject to such further order or orders as may hereafter be entered by the Commission.

"*It is further ordered,* That all rates, fares, schedules and regulations applying to the transportation of persons and property by the petitioner's Atlantic Steamship Lines between New York, N. Y., and New Orleans, La., and between New York, N. Y., and Galveston, Tex., subject to

the act, be filed with this Commission and posted as required by the act to regulate commerce and regulations of the Commission on or before July 1, 1917."*

We submit that this report of the Interstate Commerce Commission and the order based thereon are directly opposed to the fundamental proposition of the Government in the present suit. How can a common control or ownership whose continuance is in the public interest and to the advantage of commerce, or which does not exclude, prevent, or reduce competition, amount to an unreasonable restraint of trade? There is abundant evidence in this record in support of the Commission's finding, and there is no evidence to the contrary.

The fact of such a finding in respect to the negligible effect on competition of the common control of the Central Pacific lines and Sunset-Gulf route, and the impossibility of conceiving of such a finding in respect to the common control of the Southern Pacific System and the Union Pacific System, shows that there is a fundamental difference between the present case and the Unmerger Case.

The irreconcilable conflict between the report of the Commission and the contentions of the Government in this case will be made more manifest by a consideration of the extended scope which must be given to competition as used in the Panama Canal Act Amendment. The

*Note: The report of the Commission, after correction of objectionable practices, is found in 45 I. C. C. 505. The formal order is printed in the appendix of this brief.

competition which the common control of railways and a water carrier must not prevent or lessen is not simply the competition between the water line considered by itself and the rail lines considered by themselves. The Southern Pacific Company has no rail lines between the Gulf ports and New York. The Commission has always held that, in considering the public interest and the convenience and advantage of commerce, the competition to be regarded included competition between through lines made up in part of the water line and through lines made up in part of rail lines belonging to the owner of the water line. Moreover, the competition which must be protected is not only the competition which actually exists or has existed, but also any competition which might be brought into existence by a separation of the joint ownership or control in question. The mandate to the Commission is broader than any mandate given the courts by the Sherman Law. It follows, therefore, that no matter how broad a meaning the Government gives to competition in its complaint that competition between the Sunset-Gulf route and the Central Pacific line as part of the Ogden route has been destroyed, such competition is included within the competition which the Commission has found not to have been prevented or reduced.

The provisions of the Panama Canal Act Amendment prescribing the conditions under which the Interstate Commerce Commission may authorize the continued ownership by a railroad of a line of water carriers which

may or does compete with its rail lines are inconsistent with the theory upon which the Government is prosecuting this suit. The Government asserts as a proposition so universally true that it need not be supported, and cannot be overthrown, by any evidence, that common ownership or control of any parts of two lines of transportation which may or do compete, is so restrictive of competition as to constitute such common ownership or control, without more, an unreasonable restraint of trade. But the provisions in question of the Panama Canal Act imply that there may be a common ownership or control of two lines of transportation which are actual or possible competitors that is of public advantage or convenience and that does not exclude or restrict competition between them.

Congress seems always to have regarded the common ownership or control of links in two or more competing through routes as not necessarily so restrictive of competition as to be against the public interest. By the act of July 27, 1866 (14 Stat. 292, Sec. 18), it authorized the Southern Pacific Railroad Company to construct and operate a line from San Francisco to Needles, to form part of the transcontinental line along the 35th parallel of latitude, and by the Act of March 3, 1871 (16 Stat. 573, sec. 23), it authorized the same company to construct and operate a line from San Francisco to Yuma to form part of a transcontinental line along the 32nd parallel of latitude. And there is good reason to believe that Congress knew at the time that the Central Pacific and the Southern Pacific Railroad Companies were then under a common control.

We submit that the report and order of the Interstate Commerce Commission strongly support the practically unanimous testimony in this case to the effect that—

(1) The inclusion of the Central Pacific lines in the Southern Pacific System has not eliminated competition between the Ogden route and the Sunset-Gulf route, the finding of the Commission being that there is "most active and vigorous competition" between the two routes.

(2) The common ownership and operation of the Sunset-Gulf route and of the Central Pacific link of the Ogden route neither excludes, prevents nor reduces such competition.

(3) The present common ownership and operation is of advantage to the convenience and commerce of the people.

We believe, however, that it will not be necessary for the Court to consider whether any increase of competition may be effected by the separation of the Central Pacific lines from the other lines of the Southern Pacific System, because the origin and nature of the common control complained of is such as to exempt it from the condemnation of the Sherman Law even if some increase of competition might result from a termination of such control. And this brings us to the defense based on the origin and manner of the formation and development of the Southern Pacific System.

III. The defense based on the origin of the common control of the lines composing the Southern Pacific System and on the manner of the formation and development of that system.

An important and fundamental defense to the case under the Anti-Trust Act is afforded by the origin and nature of the common control complained of and the manner of the formation and growth of the resulting system of railroads. Here again it is not our intention to discuss in detail the facts upon which this defense is based or to show to what extent it is an answer to the alleged violations of the statute. The main brief for defendants does this. Attention is now called to this defense and its legal significance, because the facts upon which it is based serve to make the Southern Pacific System essentially different from the combination of railway systems attacked in the Unmerger Case.

The common control resulting from the union under one management of the railroads composing the Southern Pacific System did not originate from the combination of prior existing competing lines. It was coincident with the construction of each part of the system. It not only antedated the Sherman Law, but it antedated the construction of the railroads over which it extends. It may be said to have existed *ab initio,* and the railroads included in it to have never had an independent existence. The present system of railroads is the creation of that common control. Its growth and development, which has been by construction by the normal

means and in the usual manner according to which a system of railroads is naturally developed, was influenced and determined by the common control to which it has always been subject. That is to say, the different parts of the system were conceived and constructed as parts of one interdependent system of lines.

The manner of the growth and development of the system is graphically shown by the series of maps portraying the system at different stages of its development (Defendants' Exhibits 1 to 7) and by the testimony, among other witnesses, of Mr. Kruttschnitt (see particularly II Vol., pp. 725-6, 727). Exhibits numbers 1 to 6, inclusive, are maps which exhibit the growth and development of the Southern Pacific System (including as a part thereof lines standing in the name of the Central Pacific) by showing the lines in existence on successive dates, viz: January 1, 1870, January 1, 1875, January 1, 1880, January 1, 1882, March 1, 1885, and July 2, 1890. Exhibit No. 7 is a map intended to show the Southern Pacific System west of El Paso as it was on July 2, 1890, the date of the Federal Anti-Trust Act, and to show each subsequent addition or extension thereof. Every such addition or extension is designated and numbered, and the reason therefor explained and justified by Mr. Kruttschnitt (Vol. II, pp. 714-727). The gradual, ordinary, normal growth and development of the system as one interdependent whole is thus clearly demonstrated. (Exhibit No. 7 will be found at the beginning of Vol. V, Defendants' Exhibits.)

It follows from the foregoing that there has been no

elimination or restriction of any prior existing competition, and the system of railroads is to be regarded as one organic whole and not as an abnormal union or combination of two or more independent competing lines. It follows also that the proposed separation of the roads standing in the name of the Central Pacific from the rest of the system is not an unmerging of two systems. There are no separate and distinct units to be restored to a former independent existence. The division which the Court is asked to make amounts to a disintegration of one interdependent system into more or less incomplete parts. As would naturally be expected from a common control which has continued for more than forty years, with reference to which the lines of railway were constructed, to which business has become accustomed, and with which the public are satisfied, the result of the disruption which the Government seeks to obtain will be most injurious not only to the dismembered parts but to the public depending upon them for service. Neither the Central Pacific, separate from the system with which it has grown up, nor the other lines of the system, severed from the Central Pacific, in union with which they were born and raised, can serve the public as well or supply the same amount of useful, effective competition as they have done under unified management.

As to the legal significance of the manner of the formation and development of the system of railroads now charged with undue and unreasonable restraint of trade, it certainly distinguishes this

case from the Union Pacific-Southern Pacific unmerger and other cases relied on by appellant, all cases of combinations between railroad companies having an independent origin and existence which, prior to the combination, had been competing with each other, so that in each case it was found by the Court that the purpose and effect of the combination was to destroy or unduly restrict prior existing competition, and the dissolution of the combination restored self-sufficient units to the *status quo ante* of independent competitive existence.

That the distinction just pointed out is material will have to be supported by an appeal to reason rather than authority, because it does not seem to have occurred to any one before this suit to charge that the Sherman law was violated by a common control which did not result from a combination between previously independent competitors but from the construction of a system of lines by one and the same interest. To construct and thereafter operate two trading or manufacturing concerns doing the same kind of business in overlapping territory is not the same thing in fact or in the eyes of the law as the purchase by the owner of one such concern of another, similarly located, but independently owned and operated. In the one case there would be an extension of trading or manufacturing facilities with no effect upon any competition that ever existed; in the other case one competitor would absorb another competitor and a disappearance of

prior competition would result. One man may build two railroads so located that a part of the traffic carried by one could be carried by the other, and both may serve in some degree a common territory, so that, if they were independent enterprises under separate ownership, they would be competitors; yet it cannot be said that, by constructing two lines of railroad one of which was a potential competitor of the other in respect to some traffic, a person was guilty of suppressing or diminishing competition. No reasonable construction of the Sherman law can make it prohibit a man, or the same set of men acting under one corporate name or several corporate names, from constructing and thereafter owning and operating two or more lines of railroad so situated that one by itself or in connection with other lines may serve territory which overlaps the territory served by the other. And this is true, although at the same time it may be true that different parts of such a system, if they had had an independent existence and so had been competing with each other, could not thereafter lawfully be united in a common ownership or control because of the destruction or diminution of antecedent competition which would result. When the construction of the Central Pacific line to Ogden was followed by construction of the line from San Francisco which, with connections, reached the Gulf by a more southern route, and thence by steamships was extended to the Atlantic coast, the effect was

to add to the lines of transportation open to the public and not to diminish or restrict any existing competition. It is absurd to say that the construction and subsequent operation of this new line constituted a restraint of trade simply because such addition to the transportation facilities of the company was made by the same people who owned the Central Pacific.

In this connection the use of the adjective "natural" in the petition of the Government is significant. Heretofore the adjectives "actual," "existing," "prior existing," or the noun "competition," without any qualifying or restrictive words, have been sufficient to define the prohibitions of the Sherman law or to charge a violation of that law, but by reason of the origin and nature of the Southern Pacific system of lines it became necessary in this suit to seek a more comprehensive adjective than "actual," or "existing," or even "potential," to be used in describing the competition which defendants are charged with preventing. The word "natural" was therefore selected. It is used to denote competition which would exist if two or more concerns were not owned by the same person. To charge that two business enterprises or two lines of railway engaged in interstate commerce are "natural competitors" is not sufficient to show that their joint ownership or control is a restraint of trade or even an elimination of competition, unless it be further shown that such natural competitors came into exist-

ence under separate ownership, and that the joint control is a result of a subsequent contract, combination or conspiracy which had for its dominant purpose and effect to suppress the competition which before that time had existed between the parties to the combination. Otherwise there would be a restraint of competition whenever one person (individual or corporation) owns or constructs and thereafter operates two or more stores or manufactories or lines of railroad which, if separately owned, might compete with each other. And, in order to avoid the charge of elemination of competition, and, possibly, of restraint of trade, commercial and manufacturing enterprises would have to be confined to practically one store or plant; for the facilities of communication are such that the field of trade of commercial and manufacturing enterprises may be coextensive with this country, and those situated in remotely distant parts of the United States may have overlapping and competitive territory. The adoption of the Government's theory of what constitutes a restraint of trade would prevent a railroad company from building parallel branches or feeders or loops to serve different parts of tributary territory or any divergent stems or forks to put itself into connection with different gateways; for, considering the vast number of railroads in this country, it would always be possible for some part of a system of railways to form with some possible connection a through line which might compete for some traffic

with the parent road. The use of the term "natural competitor" in the petition may be characterized as an ingenious effort to extend the meaning of the Sherman law to an unprecedented and unwarranted extent.

The defense based on the origin and nature of the Central Pacific-Southern Pacific System amounts to as much as the difference between a charge of restraint of trade based on the elimination or lessening of previously existing competition and an alleged restraint of trade based on the hypothetical, uncertain, indirect effect on competition resulting from the same person constructing and thereafter operating lines of railway which, under different ownership, might have been differently constructed or combined differently with other lines so as to make the sum total of competition greater than under existing conditions. And the difference is as great as no cause of action and a possibly good cause of action under the Anti-Trust Law.

We are firm in the belief that the genesis of the Southern Pacific System is sufficient of itself to show that it is not within the condemnation of the Federal Anti-Trust Act. When we go further, as we shall do in this argument, and show that the system of railways so formed and developed possesses none of the characteristics of a prohibited combination or conspiracy in restraint of trade and has neither the power nor any motive to destroy competition, and that its preservation rather than its dissolution is demanded by the public

interest, we are really assuming the offensive, because we are showing, not only that there are no legal grounds for the dismemberment of the system, but no reasonable ground or excuse for an attempt on the part of the Government to accomplish such a result.

We claim that the defense under discussion, the origin and nature of the common control, is a complete answer to the whole of the Government's case under the Sherman Law, even if this control had prevented or lessened any competition which would otherwise exist between the Central Pacific lines and the other lines of the Southern Pacific System. This is true because the nature and origin of the common control gives to the system the same legal character it would have if it had been originally constructed and owned by one and the same corporation, and for the other reasons set forth in the briefs. But we do not admit that the effect of the common control is to prevent any competition which would otherwise exist between the Central Pacific lines and the other lines of the system. There is no competition between the "Sunset route" and the Central Pacific line to Ogden as such, or between the other lines of the system and the Central Pacific lines, considered by themselves. The only competitive relations alleged and attempted to be proved are those between the "Sunset route" and the Central Pacific-Union Pacific through line. While it is not necessary for our case, we shall endeavor to show that the contention of the Government, that the common control complained of has prevented or created the

power and incentive to prevent the competition between the Ogden route and "Sunset route", is not only contrary to the evidence in the present case, but contrary to the evidence, the pleadings and contentions of the Government and the findings of this Court in the Union Pacific unmerger suit. As the common control has always existed the contention of the Government means that there has never been a time when any real competition betweeen the two routes existed.

This brings us to a discussion of the issues and decision in the Unmerger Suit. We expect to show that whether at the time of the merger in 1901 actual competition existed between the Ogden and the Sunset routes, and the extent of such competition, and whether the control by the Southern Pacific Company of the Central Pacific created the power or incentive to prevent such competition, were material issues in the former suit. They were presented by the pleadings, testified to by witnesses, discussed in the briefs, and finally decided by the Supreme Court, the decision being in favor of the actual existence, prior to the merger, of "competition, sharp, well defined and vigorous", and of the absence of power or motive on the part of the Southern Pacific Company to destroy or control such competition. We expect further to show that the Southern Pacific System, with the Central Pacific lines included therein, is amenable to none of the objections which led to the condemnation of the Union Pacific-Southern Pacific merger.

IV. The Union Pacific Unmerger Case (United States vs. Union Pacific Railroad Company, Southern Pacific Company, et als., 226 U. S. 61).

The defendants have put in evidence the record in the above case, consisting of the pleadings and the orders, decrees and opinions of both courts (Defendants' Exhibits, Vol. VI, pp. 1990, ffg.). They have also put in evidence the brief and argument filed in this Court on behalf of the United States. We propose now to show the issues raised by the pleadings, to confirm and fortify the conclusions drawn from the pleadings by references to the brief and argument, and then to show how those issues were decided by this Court and upon what grounds. Such showing will make clear that the decision in the Unmerger Suit is no precedent for a judgment against defendants in the present case, and that the Government secured the unmerger of the Union Pacific and Southern Pacific systems upon propositions of fact and of law inconsistent with those it now relies upon to secure the dismemberment of the Southern Pacific System.

The Pleadings.

The parties defendant were the Union Pacific Railroad Company, the Oregon Short Line Railroad Company, the Oregon Railroad and Navigation Company, the San Pedro, Los Angeles and Salt Lake Railroad Company, the Atchison, Topeka & Santa Fe Railway Company, the Southern Pacific Company, Northern

Pacific Railway Company, Great Northern Railway Company, Farmers Loan & Trust Company, E. H. Harriman, Jacob H. Schiff, and other individuals.

After alleging the interstate commerce business of the defendant railroad companies and the relations of the individual defendants to the Union Pacific Railroad Company, the petition (paragraph III) sets forth the corporate history of the Union Pacific and of the Central Pacific with special reference to the Pacific Railroad Acts, and cites the provisions of those acts requiring the operation of those roads as one continuous line, quoting Section 15 of the act of July 2, 1864, and stating the terms of the amendment of June 20, 1874. The petition, in the same paragraph, describes the location of the main lines of the Oregon Short Line and of the Oregon Railroad and Navigation Company, and alleges the ownership of those companies by the Union Pacific. It also shows the ownership in 1901 and since by the Oregon Railroad and Navigation Company of a line of steamships between Portland and San Francisco and of a line of steamships plying between Portland and Japan, China and other points of the Orient. It also alleges the ownership by the Southern Pacific Company of the lines of railroad from Portland to New Orleans and Galveston and the operation in connection therewith of the steamships to New York, as well as its ownership of the capital stock of the Central Pacific and the operation and management of the lines of that Company.

The competition existing at the time of the merger

betwen the Union Pacific System and the Southern Pacific System is thus described in paragraph III of the petition:

> "That the said rail lines of the said Southern Pacific Company from the Mississippi River to Portland, Oreg., by way of San Francisco and Los Angeles, were in active competition with said lines of railroad of the Union Pacific Railroad Company for the transportation of vast quantities of freight from points in the Mississippi Valley and in the Eastern States; both to and from the Pacific coast and points in Colorado and other interior States; and said steamship line of said Southern Pacific Company from New York to New Orleans and Galveston, together with its rail lines run in connection therewith, was in active competition with the lines of said Union Pacific Railroad Company for a large amount of traffic originating in the Atlantic coast and Central States;
>
> "That the rail line of said Southern Pacific Company from San Francisco to Portland was in active competition with the ships plying between San Francisco and Portland and owned by said Oregon Railroad & Navigation Company, as hereinbefore alleged;
>
> "That the said ships of the Portland and Asiatic Steamship Company, in connection with the rail lines of said Union Pacific Railroad Company and its subsidiary companies, as hereinbefore alleged, running from Portland, Oreg., to the East, were in active competition with the ships of said Pacific Mail Steamship Company and the rails of said

Southern Pacific Company running to the East from San Francisco;

"That the line of railroad composed of the tracks of said Oregon Short Line Railroad Company and said Oregon Railroad & Navigation Company between Ogden, Utah and Portland, Oreg., were in active competition with the lines of said Southern Pacific Company, between said points;

"That the rail lines of the said Southern Pacific Company were in active competition with the ships and rail lines of the said Oregon Railroad & Navigation Company for a large amount of traffic between San Francisco and points in Montana, Idaho, and other States;

"That the competition hereinbefore alleged between the system of railroads and steamships owned and controlled by said Union Pacific Railroad Company and the system of railroads and steamships owned and controlled by said Southern Pacific Company was substantial and included a large volume of traffic, both freight and passenger."

The remainder of the paragraph deals with competition of the Union Pacific System with the Santa Fe System and with the Northern Pacific and Great Northern systems.

It clearly appears from the foregoing that the petition alleges the existence at the time of the merger of "active competition" between the Union Pacific and the Southern Pacific systems in the following fields:

(*a*) Between the rail lines of the two systems for traffic to and from Colorado and other interior States.

(*b*) Between the Southern Pacific steamship line from New York and Galveston and New Orleans, in connection with its rail lines, and the Union Pacific for Atlantic Coast and Central States traffic. This is equivalent to the allegation of active competition at the time of the merger between the "Ogden route" and the "Sunset-Gulf route" in respect to Atlantic Seaboard territory.

(*c*) Between the rail line of the Southern Pacific and the steamship line of the Union Pacific between San Francisco and Portland.

(*d*) Between the steamships in the Asiatic trade of the Union Pacific running from Portland and those of Pacific Mail (in which the Southern Pacific had a majority stock ownership) running from San Francisco.

(*e*) Between rail lines of the two systems between Ogden, Utah and Portland, Oregon.

(*f*) Between the rail lines of the Southern Pacific and the ships and rail lines of the Union Pacific between San Francisco and points in Montana, Idaho and other States.

The important fact is the allegation then, forming an admission now, of "active competition" at and prior to the merger between the Ogden route and the Sunset-Gulf route, the charge made and sustained being, as we shall hereafter see, that such competition was

destroyed by the merger. Another important fact is that the competition between the Ogden gateway and the El Paso gateway was not the only competition between the two systems. They were striving for traffic in many other competitive fields at the time they were merged. (See also testimony of Mr. Spence in the present suit, Vol. III, p. 1178.)

Paragraph IV of the petition alleges the acquisition for the Union Pacific of $75,000,000, out of a total then outstanding $197,847,788, of the capital stock of the Southern Pacific Company, for the purpose and with the effect of eliminating the aforesaid prior existing competition, which holding of stock was afterwards increased to $90,000,000; and that by virtue of such stock ownership the management of the two systems was amalgamated and the competition previously existing between the two railway systems and their steamship lines was destroyed.

Paragraph V shows the efforts of the defendants, Harriman, Schiff, Kahn and Stillman to acquire control of the Great Northern, the Northern Pacific and the Chicago, Burlington & Quincy. Paragraph VI relates to their dealings with the San Pedro, Los Angeles & Salt Lake Railroad Company, and Paragraph VII to their efforts to secure control of the Atchison, Topeka & Santa Fe Railway Company.

The relief was a general prayer that the defendants, and each of them, be enjoined from carrying on the conspiracy charged as existing to restrain interstate and foreign trade and commerce, and a part of the spe-

cial relief prayed for was the unmerging of the Union Pacific and Southern Pacific systems by the sale of the Southern Pacific stock held by or for the Union Pacific. It was further prayed that the Court grant such other and further relief as the nature of the case may require.

Coming now to the responsive pleadings, the answer of the Union Pacific and its subsidiary companies, the Oregon Short Line and the Oregon Railroad & Navigation companies, admits, among other things, the construction of the Union Pacific and of the Central Pacific under the Pacific Railroad Acts, refers to those acts for an answer to the statements in the petition respecting the duties imposed upon the companies covered thereby, but makes no averment as to any failure on the part of the Central Pacific or Southern Pacific to discharge those duties. It admits the ownership by the Southern Pacific Company of the lines of steamships between New York and Galveston and between New York and New Orleans, and its ownership of the capital stock of the railroad companies owning the lines of railroad from New Orleans and Galveston, through the States of Louisiana, Texas, New Mexico and Arizona, to San Francisco, California, and Portland, Oregon.

The answer sets up the history of the Central Pacific Railroad Company, its indebtedness to the United States, the settlement of that indebtedness, involving the organization of the Central Pacific Railway Company. It is specially averred (paragraph III, clause 25) that the discharge of such indebtedness was caused

and brought about by the Southern Pacific Company, which provided the means for satisfying the same.

It is denied (clause 27),

> "that the steamship lines of the Southern Pacific Company between New York and New Orleans and between New York and Galveston, together with the rail lines in connection therewith, were in active competition with the lines of the Union Pacific Railroad Company for a large amount of traffic originating on the Atlantic Coast and in the Central States."

It is averred, on the contrary (clause 28),

> "that in the transcontinental lines of railroad reaching the Pacific coast south of Portland, Oregon, the Union Pacific Railroad was but a link, about 1,000 miles in length, and the defendant Union Pacific Railroad Company merely an intermediate carrier without any power to make rates upon such traffic, and that the defendant Southern Pacific Company, through its possession and operation of the Central Pacific Railroad and its ownership of all the stock of the Central Pacific Railway Company, controlled that portion of such transcontinental line about 850 miles in length extending from Ogden, Utah, to the Pacific Ocean at San Francisco and other points in California, and no rate between the Missouri River or points east thereof and the Pacific coast south of Portland or Asiatic ports could be made by these defendants except with the consent of and by agreement with said Southern Pacific Company; and while these defendants separately owned connect-

ing lines of railroad, operated as a single system as aforesaid, extending from the Missouri River to Portland, Oregon, and operated certain small steamships between Portland and San Francisco, as aforesaid, yet they aver that such route via Portland was not only an impracticable route as a competitor of said Southern Pacific Company, but any attempt of these defendants to use it as such competitor would have greatly injured defendant Union Pacific Railroad Company, because said Southern Pacific Company would thereupon have preferred the rivals of said Union Pacific Railroad Company in routing and interchanging traffic at Ogden, and the business, in tonnage and revenue, which defendant Union Pacific Railroad Company would thereby have lost would have greatly exceeded the total volume of any business it could have secured over such impracticable route in competition with said Southern Pacific Company, so that the interest of defendant Union Pacific Railroad Company, and the companies formerly owning its lines, always prevented it and them from using or attempting to use the said route via Portland in competition, with said Southern Pacific Company upon any business to or from the Pacific coast south of Portland or to or from Asiatic ports."

Specific denials are made of the existence of competition in other fields described in the petition.

Then follows, in Paragraph IV, Clause 14, the reasons alleged for the acquisition of the stock of the Southern Pacific Company, namely:

"That although the railroad of the Union Pacific Railroad Company and the said Central Pacific

Railroad physically formed a continuous line from the Missouri River to the Pacific Ocean, yet almost one-half the length of said line, to wit, from Ogden to San Francisco, with many branches, was owned by the Central Pacific Railway Company, and was controlled and operated by the Southern Pacific Company, and no rate for the transportation of passengers or property over the said line between the Missouri River and the Pacific Ocean could be made without the concurrence of both the Union Pacific Railroad Company and the Southern Pacific Company; and the only means by which the Union Pacific Railroad Company could secure control of the said Central Pacific Railroad was to secure control of the said Southern Pacific Company, which owned every share of the stock of said Central Pacific Railway Company. That the lines of railroad now owned by defendant Union Pacific Railroad Company had been greatly improved while in the hands of receivers in the foreclosure proceedings hereinbefore mentioned and prior to January 1, 1901, it recognized the necessity, in the interest of the public as well as of itself, of further improving, and it had determined to further improve, the said railroads, particularly the line between Council Bluffs and Ogden, in order to be able to develop its traffic and serve and accomplish the object of its construction, and to handle such traffic efficiently and economically. Unless the line of the Central Pacific Railway Company, extending from Ogden to the Pacific Ocean, was likewise improved, and put and maintained in condition to handle promptly and efficiently the transcontinental traffic passing over

the Union Pacific Railroad, the improvement of the latter, as contemplated, would be practically futile. The said Central Pacific Railroad had been mortgaged for large amounts, and the Central Pacific Railway Company was without means or credit to procure the means necessary to bring, by improvements, its said line of railroad up to anything approximating the condition and efficiency of said Union Pacific Railroad; and the Southern Pacific Company was also without such means or credit, as practically all of its assets, and the assets of the various corporations controlled by it were mortgaged or otherwise pledged. The stock of defendant Southern Pacific Company formerly owned by Collis P. Huntington, who died in August, 1900, together with other stock amounting to nearly one-half of the shares of said company, was for sale, and if the same had been acquired by any interest adverse to defendant Union Pacific Railroad Company, its plans, efforts and object to improve its line of railroad between Council Bluffs and Ogden, and the substantial object of the aforesaid acts of Congress providing for a continuous line and system from the Missouri River to the Pacific Ocean, would have been defeated and rendered futile, and defendant Union Pacific Railroad Company would furthermore have been deprived of any opportunity to become, and rival lines would have become, the preferred connection of said Southern Pacific Company and Central Pacific Railway Company at Ogden, Utah, and the value of the lines of railroad and the credit of the Union Pacific Railroad Company would have been greatly and permanently depreciated

and impaired. For the purpose of procuring the improvement of the said Central Pacific Railroad, and to bring it up to the standard and degree of efficiency approximately of the line of the Union Pacific Railroad, and in order that said Union Pacific Railroad Company should become and securely remain the preferred connection of said Southern Pacific Company and Central Pacific Railway Company at Ogden, and thereby secure the unrouted traffic of said companies interchanged at Ogden, and in order to protect itself against the acquisition and control of said Central Pacific Railway Company by adverse interests to these defendants, and without any intent or purpose in anywise to suppress or restrain any competition in interstate or foreign commerce the said 900,000 shares of the capital stock of said Southern Pacific Company were purchased and acquired as hereinbefore alleged by defendants Union Pacific Railroad Company and Oregon Short Line Railroad Company and are now so held by the company last named."

It is significant that the reasons for the acquisition of the Central Pacific line are based upon apprehended trouble should the stock of the Southern Pacific Company pass into hostile hands, not upon any past misconduct or failure of the Central Pacific, under the control of the Southern Pacific, to discharge its duties under the Pacific Railroad Acts.

The remainder of the answer deals with matters with which we are not presently concerned.

As was to be expected under the circumstances, the

Southern Pacific Company in its answer makes the same defenses as the Union Pacific. It also denies competition between the Ogden route and the Sunset-Gulf route and avers that no through rate could be made over either without its consent. It denies the existence of competition between the two systems in the other respects charged in the petition.

It is significant that it especially defends its control of the Central Pacific and its acquisition of the stock of the Central Pacific Railway Company.

The answers of the other defendants are not material to this inquiry. To all the answers general replications were filed.

The Brief and Argument of the United States.

We have put in evidence the briefs on the facts and on the law filed on behalf of the United States for the light they throw upon the issues and upon the materiality of the several issues.

The Attorney General treated as one of the issues in the case, and one of the most important issues, the existence *vel non* at the time of the merger in 1901 of actual competition between the Union Pacific and the Southern Pacific in respect to traffic between California and the Atlantic coast, and contended that such competition existed because of the active competition for such traffic which existed between the alternative routes, now familiar to us as the Ogden route and the Sunset-Gulf route. This necessarily implied the assertion that the ownership of the Central Pacific by the Southern

Pacific Company had not prevented such competition, and counsel for the United States expressly claimed that such was the proven fact.

This contention, which as we shall see prevailed in this Court, is absolutely inconsistent with the present contention that the competition between the Ogden route and the Sunset-Gulf route or the El Paso gateway was prevented by the Southern Pacific's ownership of the Central Pacific, and with the present contention that such competition as is claimed to have existed and to exist between the two routes was unaffected by the merger of the Southern Pacific with the Union Pacific.

One of the main headings of the Government's Brief of Facts is "Competition Between Union Pacific and Southern Pacific Previous to Merger" (p. 34 of the brief). This is referred to as perhaps the most prominent issue tendered by the pleadings, which are analyzed to show the allegation on the one hand and the denial on the other of such competition. On page 35 will be found an enumeration of the different competitive fields, seven in number, in which the Union Pacific and the Southern Pacific systems were striving for traffic at the time of the merger. That such competition was actual and in respect to traffic important in amount, is shown under seven subdivisions of the brief.

The first of these subdivisions "Competition As to Traffic Between the Atlantic Seaboard and the Pacific Coast", is discussed on pages 36-90. After a preliminary description of the alternative through lines in

question and of the efforts of the Southern Pacific to secure the routing of traffic via El Paso, New Orleans, and thence to destination via its steamship lines, and the efforts of the Union Pacific organization to secure the traffic via the Ogden route, and of the rates and divisions, the following conclusion was stated (p. 39):

> *"Therefore there was the same incentive to active, energetic competition between these lines that there would have been had the Southern Pacific not owned the line between Ogden and San Francisco."*

This statement is supported by quotations from the testimony of a large number of witnesses showing the existence prior to the merger of active, vigorous, effective competition between the Ogden gateway and the El Paso gateway, and especially between what we now term the Ogden route and the Sunset-Gulf route (pp. 39 ffg.).

From page 78 of the brief we quote as follows:

> "It is a significant fact that the defendants spent several weeks in introducing testimony to show with infinite detail the improvements made since 1901 on the right-of-way and equipment of the Union Pacific and Southern Pacific, but made no effort to break down the showing made by complainant as to the active competition thus existing up to the time of the merger between the two systems."

On page 86 it is said that from this "great mass of testimony" it would seem to be "conclusively estab-

lished" that not only was there competition between the Southern Pacific and Union Pacific as to traffic in the handling of which "neither system used a foot of the rails of the other, and as to which competition no witness has suggested a doubt", but "these lines were also competitive as to an enormous traffic moving between New York common points and California". And the brief goes on to present the competitive situation as follows, pages 86-88:

> "The only difference between the movement to California and to Portland and Oregon points consisted in the fact that from Ogden to San Francisco the California traffic moved over the rails of the Southern Pacific. But the Union Pacific line is a thousand miles long. Through its friendly connections east of the Missouri River, it constitutes a direct line from the seaboard to Ogden, 2,500 miles in length in round figures. Under the laws of Congress, as we will show in our brief of the law, the Union Pacific and the Central Pacific lines were required to be operated as a continuous line without discrimination; but irrespective of the law, the Southern Pacific, as a matter of self-preservation, was always compelled to and did gladly interchange business with the Union Pacific, accepting for its share of the through haul, the division of the through rate accorded to it by consent, from 1870 down to the present time, as testified to by Mr. Stubbs. The fact that at Omaha the Chicago, Milwaukee & St. Paul, the Chicago & Northwestern, Chicago, St. Paul, Minneapolis & Omaha, the Chicago, Burlington & Quincy, the Rock Island, the Wabash, the Chicago

Great Western, and the Illinois Central, were pouring vast streams of traffic into the Union Pacific to be transported thence to the coast, made that a very powerful transcontinental line; and in addition to this traffic moving through Omaha, there are many lines connecting with the Union Pacific at Kansas City, with which transcontinental business was interchanged.

"The statistics to which we shall later refer show the immense earnings accruing monthly to that system for the handling of business to and from California points. These two great routes from the east were open at equal rates, the business was fought for by the one against the other by all means known to railroad solicitors, and it is idle speculation to consider what might have been done by the Southern Pacific in the way of diverting traffic, or raising divisions or anything else of that sort. It was, as a matter of practical railroading, an impossible suggestion that the Southern Pacific would deliberately refuse to do business turned over to it by the Union Pacific and its eastern connections, to secure which it was at no expense, and which was worked in connection with its local and intermountain business. This did not in any way, however, prevent the Southern Pacific from endeavoring to take every pound of freight it could by its own through line from one coast to the other. Every railroad man who testified, and it must be remembered that the natural sympathies of railroad men are not with the complainant here, was emphatic as to the strenuous competition and active efforts of the Southern Pacific on the one hand, and the Union Pacific on

> the other, to get and keep from each other this great traffic; and it is a new suggestion, born out of the necessities of this case, that the Union Pacific could not be a competitor of the Sunset Route of the Southern Pacific because it does not reach through to California, and hence had no power, independent of its connections, to make rates. As we have shown above, the power it condededly possesed to make rates to Portland included the power to make rates to San Francisco."

Pages 91 to 275 of the Brief of Facts are devoted to showing competition between the Union Pacific and Southern Pacific systems as to traffic between points in the interior and the Pacific coast, between the Atlantic Seaboard and Colorado and Utah common points, between Portland and Utah and Colorado common points, including certain points in Nevada, between San Francisco and Portland, between San Francisco and points in Montana, Idaho, and other States, and between various ports in the Orient and points east of the Missouri river in the United States.

Having demonstrated the existence prior to the merger of active competition between the Ogden route and the El Paso route, including the Sunset-Gulf route, notwithstanding the Southern Pacific Company's ownership of the Central Pacific, counsel for the United States then present an argument (which also was successful in the Supreme Court) to the effect that this competition was not merely permissive on the part of the Southern Pacific but existed independently of its

grace or favor. On page 276 of the Brief of Facts we find in large type the following proposition:

> **"The possession of a through line from the Missouri River to Portland with the additional strength given by the boat line from there to San Francisco, made the Union Pacific so powerful in maintaining and conducting this competitive struggle for business that the Southern Pacific was helpless to destroy that competition simply by the ownership of the line from Ogden to San Francisco over which the traffic secured by the Union Pacific ordinarily moved."**

This is followed by the statement that, "This is a fact that has at all times been recognized both by the Union Pacific and Southern Pacific companies, and has also been clearly established by the testimony in this case." It is not necessary to refer in detail to the portions of the brief dealing with this branch of the case. It is interesting to compare what was said as to the controlling influence of the Portland route on transcontinental rates, which convinced the Court and contributed to the Government's victory in the former case (pp. 283 ffg.), with the efforts of Government's counsel in the instant case to belittle and belie the exercise by the Portland route of any such influence. The argument showing want of power and of interest in the Southern Pacific Company to prevent competition between the two routes is closed (p. 317) with the declaration:

> "It was a physical impossibility for the Union Pacific to be excluded from the California

traffic. The Southern Pacific would not only have lost the business it was carrying at remunerative rates from Ogden to San Francisco, but its revenue upon traffic moving over its long line from New York and from New Orleans would have been so shot to pieces that there would have been a speedy ending to any effort to 'bottle up' the Union Pacific at Ogden, to use the expression of some of the witnesses, which was adopted by the trial court."

In order to make out this branch of the case against the Union Pacific it remained only to show that the merger of the two systems effectually destroyed competition between them, including the competition between the Ogden and Sunset-Gulf routes, and this showing was made in pages 318-395 of the Brief of Facts.

It is not necessary to repeat here the argument of the Government. It sufficed to convince the Supreme Court. Its general character may be seen from the three headings of the argument:

> **"The purpose and effect of the consolidation of the traffic departments has been to destroy competition"** (p. 318).
>
> **"After the purchase of the control of the Southern Pacific by the Union Pacific, not only were agencies consolidated and the competitive efforts of soliciting agencies withdrawn, but the agents of the two systems were instructed to handle traffic in a way to produce the most revenue for the consolidated system"** (p. 360).
>
> **"Previous to the acquisition of the control of the Southern Pacific by the Union Pacific, as to such business as the Southern Pacific could not get by its**

own route to the East by New Orleans, and which had to move by Ogden, there was an active competition kept up between the Union Pacific and the Rio Grande, but this competition on the part of the Rio Grande was substantially destroyed through the joint efforts of the Union Pacific and Southern Pacific agencies" (p. 372).

We call attention to the fact that counsel for the Government demolished the contention, evidently made by the Union Pacific, that the continued competitive solicitation of traffic for the Ogden and Sunset-Gulf routes by the agents of the Union Pacific-Southern Pacific organization was as effective to produce competition between the two routes as the previous competitive striving for traffic independently by the Union Pacific and the Southern Pacific. Notwithstanding such demolition counsel for the Government in the present suit seeks to revive the Union Pacific's contention and urges it now against the Southern Pacific. We may be pardoned, therefore, for reproducing one of the shafts with which such contention was punctured (p. 319):

> "A fanciful idea has been born out of the necessities of this extraordinary situation, to the effect that competition can go on just the same, even though there is a common head to the various parts of the system, which were formerly in competition. Of course, that is absurd on its face, but in the case of the Union Pacific and Southern Pacific systems, the farce of maintaining separate commercial agents who come in immediate contact with the shipper, has

been abandoned, except in the case of New York City and San Francisco, and those offices, as we will show by the testimony, have practically been consolidated because of the instructions given as to the way business should be worked."

In the Government's Brief on the Law the same propositions in respect to the existence of active competition at the time of the merger between the Union Pacific and Southern Pacific systems, including competition between the Ogden route and the Sunset-Gulf route, are advanced and supported by cases defining competition and the effect thereon of a combination between competing railroad companies.

Whatever be the ruling of the Court upon the pleas of estoppel, we will certainly not be denied the right to avail ourselves of the arguments made by the Government in the former suit. And we may safely assume that they will suffice in this suit, as they did in the former suit, to overcome the contention that the ownership of the Central Pacific lines by the Southern Pacific Company prevented or created the power to prevent or had an interest in preventing competition between the Ogden route or the Sunset-Gulf route, and the contention that the competition, if any, between the two routes remained the same after the merger of the Union Pacific and Southern Pacific systems. The fact that in the former case those contentions were denounced, and

the present case are adopted, by the Government, does not make the arguments any the less convincing.

Opinion and Decree of the Supreme Court.

We ask special attention to the discussion of the opinion of the Court which follows because, in showing that a decision against the lawfulness of the combination of the Union Pacific and Southern Pacific systems is not authority for the separation of the Central Pacific lines from the Southern Pacific System, we at the same time show that the Southern Pacific System, whether considered with reference to its origin and subsequent development or with reference to past, present or prospective conditions, is not an unlawful combination in restraint of trade. In order to make clear the radical difference between the inclusion of the Central Pacific lines with the other Southern Pacific lines in one system and the merger in 1901 of the Union Pacific and Southern Pacific systems, we shall state the objectionable features which led to the condemnation of the merger and then show the absence of such features from the common control of the Central Pacific and other Southern Pacific lines.

When, in addition to the various points of difference to which we are about to call attention, it is remembered that the common control now complained of took place nearly a half century ago and has been followed by no absorption or acquisition

of any competing properties but only by gradual, normal, natural growth and development, and that over the combination of the two systems involved in the former case there was the shadow of a powerful personality, ambitious for domination over the railroads of this country, and more than a hint of other great combinations or attempted combinations, it will be seen that the general conditions and atmosphere, as well as the particular facts of the two cases, differ *toto coelo* from one another.

First, as to the combination between the Union Pacific and Southern Pacific systems—

(*a*) It was a combination between two great systems of previously independent and competing railroads which, prior to the combination, were actively competing for traffic in many different fields of competition. They were distinct in origin and met only at the junction at Ogden. Each was a complete, self-sufficient whole.

(*b*) The combination was voluntary, without justifying necessity or legitimate purpose or lawful cause.

The justification alleged, that the Union Pacific was at the mercy of the Southern Pacific as owner of the line from Ogden to San Francisco, whose *future* treatment of the Union Pacific might not be as blameless as its past conduct was conceded to have been, was not accepted by this Court. The con-

trary contention of the Government was approved, namely, that the ability of the Union Pacific to operate a through competitive line to the Coast via Ogden did not depend upon the favor or permission of the Southern Pacific Company; that the Southern Pacific Company's own interests and the requirements of the Pacific Railroad Acts sufficed to insure for the Union Pacific in the future the continued operation of the through line via Ogden under reasonable conditions as to rates, divisions and otherwise. Subsequent developments, disclosed by the evidence in this case and elsewhere discussed (*infra*, pp. 107-108, 202), have demonstrated the correctness of the conclusion of the Court, that a merger of the two systems was not necessary to protect the through line via Ogden, and have shown with equal conclusiveness that the continued existence of the through line does not require, nor will its efficiency be improved by, a separation of the Central Pacific line from the Southern Pacific System.

(*c*) The result of the amalgamation into one of the two systems was to effectually destroy the active competition previously existing between them in many important fields, including that between the Ogden route and the "Sunset route".

Such was the contention of the Government, as we have already shown. Such was the conclusion of the Supreme Court; otherwise the decision would have been for defendants.

(*d*) The public interest would be subserved by the dissolution of the combination.

There was nothing to rebut the inference that the public was being injured by the destruction of the incentive to good service afforded by the prior existing competition. On the contrary, it appears from the Government's Brief on the Facts that evidence tending to show impaired service was in the record (See Brief on the Facts, pp. 19; 519-565).

(*e*) It did not appear that the unmerger would be accompanied by any consequences unjust or even injurious to the parties or that it would be otherwise than to the advantage of the public. It simply involved the renewal of the independent competitive existence of two complete self-sufficient systems, with no impairment of the service and with the probability of better service under re-created competition.

Now as to the union under one control or management, the inclusion in one system, of the Central Pacific and the other lines composing the Southern Pacific System. There is a radical difference between the organic union of lines embraced in the Southern Pacific System and the combination formed between the Union Pacific and Southern Pacific systems in respect to each of the features, indicated above, which led to the unmerger of the Union Pacific and Southern Pacific.

(*a*) The railroad system now attacked was not formed by a combination between previously existing and competing lines of railroad.

The lines of railway in question, in whatever corporate names they once stood or now stand, had a common origin and grew up together as interdependent parts of one system, without any *status quo ante* of independent operation or competitive existence. The common control preceded the building up of the system. The different parts which are now claimed to be competitive and are sought to be torn asunder were conceived and constructed, and have ever since been managed and operated, as parts of one system. They do not constitute two complete or sufficient wholes; they are interdependent parts of one whole. The resulting system of lines has the same legal character it would have had if its different parts had been constructed and had been, originally and ever since, owned and operated by one corporation. They are in a real sense one enterprise.

The distinction we are making is of such controlling importance that, at the risk of repeating what may be said elsewhere in the briefs, we shall state in a summary way the origin and formation of what is now the Southern Pacific System. For, in determining the legal character of a common ownership or management of lines of railway, one of the matters to be considered is the origin of the common control and the then existing relations of the parts. The union under one control and management, or the inclusion in one system of the Central Pacific lines and of the lines now in the name of the Southern Pacific Railroad Company began so far back in the past that its exact date cannot now be

shown. It probably antedated the construction of any lines of the Southern Pacific Railroad Company. It certainly antedated the existence, actual or contemplated, of the parts of the system which are now alleged to be competitive with the Central Pacific part. Practically every mile of the Southern Pacific System, other than the Central Pacific line between Ogden and Oakland, came into existence during the regime of the common control and management, and is the creation of the common ownership or control.

The Southern Pacific System existed before the Southern Pacific Company was created. It began when those who were in absolute control as owners of the Central Pacific Railroad Company obtained like absolute control of the Southern Pacific Railroad Company. From that time on the union between the lines and properties was as complete as if they had been owned by one and the same person. Huntington, Stanford, Crocker and Hopkins, the "big four", the men who constructed and owned the Southern Pacific system, were no ordinary men. It is not a mere figure of speech when we say that they *were* the Central Pacific Railroad Company and the Southern Pacific Railroad Company. The Southern Pacific System was their single enterprise. This was true in the seventies, and in 1883, when the Sunset-Gulf route was opened for business, and in 1885, when the Southern Pacific lease was made. The Southern Pacific Company was in the beginning the "big four" incorporated, a convenient agency for the operation of the previously existing system, before then

known as the Central Pacific System and after that time as the Southern Pacific System. The lease did not create the common control or management or alter its essential character. It had no practical effect upon the operation or management of the properties. The same officers and employees with the same functions and work continued as before. The testimony of these men is to the effect that they went to bed one night all "C. P.'s" and woke up the next morning all "S. P.'s", and that was all there was to it.

Let us now try to get at the date when the Central Pacific lines and properties, so far as they then existed, and the Southern Pacific Railroad Company's lines and properties, such as then existed, if any, came under that common control and management from which sprang the Southern Pacific System.

The Central Pacific was under the control of the "big four" *ab initio*. As to the Southern Pacific Railroad Company, there is some reason for believing that it was initially an enterprise of Mr. Huntington and his associates. Its first report to the Secretary of the Interior under the Pacific Railroad Acts, for the year ending June 30, 1868, was forwarded in a letter from the office of the Central Pacific Railroad Company and signed by C. P. Huntington. Defendants' Exhibits No. 23, Vol. V, page 1704.

But be that as it may, certain it is that on October 12, 1870, the existence of the common control in question became manifest. On that date the Southern Pacific Railroad Company of California was formed by

a consolidation, under the laws of California, of the Southern Pacific Railroad Company and three other small railroad corporations. The "big four" appear in the articles of association as constituting a majority of the new board. (See Vol. IV of Petitioner's Exhibits, pp. 1282 ffg., Exhibit 13.) From that time on the destinies of the Southern Pacific Railroad Company were united with the Central Pacific Railroad Company. The properties ever after continued under a common control and management and developed and grew up as interdependent parts of one whole.

Taking then October 12, 1870, as the date when the union under one control of lines of the Central Pacific and of the Southern Pacific Railroad Company was a manifest fact, when the nucleus or germ of the system of railways now attacked as an illegal combination was in existence, let us note what lines of railroads were then in existence or in contemplation. This can be seen from the outline history of the corporate organization of the Central Pacific Railroad Company and of the Southern Pacific Railroad Company, Petitioner's Exhibits 12 and 13, Vol. IV of Exhibits, pages 1277, 1282. The lines in being at the time are also shown in Petitioner's Exhibit 42, IV Vol. of Exhibits, pages 1638 ffg.

On October 12, 1870, the constructed lines of railway of the Central Pacific Railroad Company consisted of the line from near Ogden to Sacramento, thence via Stockton, Lathrop, Niles and San Jose to Oakland, and two branches, the California, and Oregon, which then stopped at Chico, a short distance above Marysville,

and the San Joaquin Branch which extended from Lathrop nearly to Modesto.

On the coming into existence on October 12, 1870, of the Southern Pacific Railroad Company of California, the only constructed line was a line from San Francisco south to Gilroy, a distance of eighty miles. (IV Vol. of Petitioner's Exhibits, p. 1283.) This line as subsequently extended gradually along the coast was not connected with the rest of the system until some time in 1901. Of the four companies parties to the consolidation, the San Francisco and San Jose Railroad Company had a completed line from San Francisco to San Jose (*Id.*, p. 1283), and the Santa Clara and Pajaro Valley Railroad Company had a completed line from San Jose to Gilroy (*Id.*, p. 1284). Neither the Southern Pacific Railroad Company nor the California Southern Railroad Company had any constructed roads (*Id.*, pp. 1284-5).

The articles of consolidation contain the corporate powers of each party to the consolidation and of the consolidated company. In this way we may ascertain the extent of railroad enterprise then in contemplation.

The charter purposes of the San Francisco & San Jose Railroad Company were to construct and operate a railroad from the city of San Francisco to the city of Jan Jose (*Id.*, 1283).

The charter purposes of the Santa Clara & Pajaro Valley Railroad Company were to construct a railroad from the city of San Jose in Santa Clara County (joining there with the San Francisco & San Jose Railroad)

to a point near the town of New Gilroy in the same county (*Id.*, 1284).

The charter purposes of the Southern Pacific Railroad Company were to construct a railroad from some point on the Bay of San Francisco to pass through the counties of Santa Clara, Monterey, San Luis Obispo, Tulare, Los Angeles and San Diego to the town of San Diego; thence eastward through the county of San Diego to the eastern line of California, there to connect with a contemplated railroad from said eastern line of the State of California to the Mississippi River (*Id.*, 1284).

The charter purposes of the California Southern Railroad Company were to construct a railroad beginning at the town of Gilroy, and thence through the counties of Santa Clara, Santa Cruz and Monterey to a point near the town of Salinas (*Id.*, 1284-5).

It will be observed that the railroads contemplated by the San Francisco & San Jose Railroad Company, the Santa Clara & Pajaro Railroad Company, and the California Southern Railroad Company formed a connecting railroad from San Francisco to Salinas City, and that the railroad contemplated by the Southern Pacific Railroad Company was one passing through the counties named in the charter to Los Angeles and San Diego, and thence across to the eastern line of the State of California, there to connect with a contemplated railroad wholly *in futuro*.

The charter purposes of the Southern Pacific Railroad Company of California, formed by the consolida-

tion, was to own and operate a continuous line of railroad from the city and county of San Francisco through the counties of San Mateo, Santa Clara, Monterey, Fresno, Tulare, Kern, San Bernardino, and San Diego to some point on the Colorado River in the southeastern part of California, a distance of 720 miles, as near as may be; also, a line of railroad from the town of Gilroy to the County of Santa Clara, passing through the counties of Santa Cruz and Monterey to a point near Salinas City, a distance of nearly 45 miles (*Id.*, 1283).

It appears from the foregoing that at the time of the alleged illegal union under one control of lines of the Central Pacific and Southern Pacific Railroad companies, the only line of the Southern Pacific Railroad constructed was a short non-competitive line from San Francisco to Gilroy, and the only line in contemplation or authorized by the charter was a line from San Francisco southward to San Diego, or in the direction of San Diego, and thence eastward to a point on the Colorado River in the southeastern part of California. This line afterwards materialized as a line from Goshen to Mojave, and thence to the Needles, where it joined the Atlantic and Pacific (or Santa Fe). The portion between Mojave and the Needles was immediately after construction turned over to the Santa Fe and was operated by that Company under a lease until it acquired the full ownership by purchase. It is clear, therefore, that if we consider the lines constructed or authorized to be constructed at the time when the

authors of the Southern Pacific System did the first and only thing in the history of the system resembling even remotely a combination of railway lines, there was no destruction or prevention of competition. Indeed the competition, the elimination of which is the basis of this suit, is that between the through route via Ogden, of which the Central Pacific line forms a part, and the through route formed by the Southern Pacific Railroad Company's line from San Francisco via Yuma to El Paso and its connections thence to New Orleans and Galveston and the steamship lines to New York.

But at that time neither this through line nor the Southern Pacific Railroad Company's part thereof was in being or in contemplation. The Sunset-Gulf route was not then *in esse* or *in posse* or *in prospectu*. The act of Congress incorporating the Texas and Pacific Railway Company, Section 23 of which authorized the "Southern Pacific Railroad Company of California" to construct a line of railroad from Tehachapi Pass, by way of Los Angeles, to the Texas and Pacific Railroad at or near the Colorado River (the line to Yuma) was not passed until March 3, 1871 (16 Stat. 573). And it was not until April 2, 1871, that the articles of incorporation of the Southern Pacific Railroad Company were amended so as to include within its charter purposes the line to Yuma (Vol. 4 of Petitioner's Exhibits, p. 1285). Hence in its origin or conception, as well as in its construction, the Sunset-Gulf route is a creature of the common control. The common ownership or control which extended the Central Pacific line to

Goshen built under a different name the line thence to Mojave, to Los Angeles, to Yuma, to El Paso and beyond, using the same organization, even the same contractors, and operating the line as constructed by the same operating organization as had charge of the Central Pacific line. At the time the Sunset-Gulf route was opened for business in 1883 and at the time of the lease to the Southern Pacific Company in 1885, and at the date of the Sherman Law, *the part of the Sunset-Gulf route north of Goshen was a line belonging to the Central Pacific Railroad Company* (Kruttschnitt, II Vol., 723). At no time from the beginning, at least from October 12, 1870, has there been a time when the Central Pacific lines and the other lines of the system, as they came into existence, were not parts of one system. There has never been a break in the continuity of the unified management and common control. There is no date subsequent to October 12, 1870, which can reasonably be taken as the origin of the union into one system of the Central Pacific lines with the other lines of the system.

Such being the nature and origin of the railway system now attacked, can it be said to be a combination between previously competing lines? Can it be said to be a combination which had for its purpose or effect to eliminate competition between the Central Pacific line to Ogden and the Sunset-Gulf route? Is it a "combination" at all in the sense in which the word is used in the federal Anti-Trust Act? To call the Central Pacific line and the lines forming part of the Sunset-

Gulf route "natural competitors" does not advance the Government's case. It is a novel proposition that the Attorney-General may look over any railroad system and, when he finds that there have been constructed as parts of the system lines of road which furnish alternative routes for traffic and under independent ownership might compete with each other, he can dismember the system on the ground that it is a combination of natural competitors. It is also an absurd proposition. A common ownership or control cannot be at the same time the creator of competitive units and the destroyer of competition between them. A case of undue and unreasonable restraint of trade is not shown against a corporation owning or controlling a system of railroads by showing simply that an increase of the general stock of competition might result if some parts of its system were separated and either placed under independent ownership or turned over to some rival company.

We might pursue the subject further, but we submit enough has been said to show the radical difference between the Southern Pacific System, the manner of whose origin and gradual growth from within has been fully developed by the evidence, and the amalgamated system artificially created at one time by the combination of the Union Pacific and the Southern Pacific systems. This difference extends to the nature and effect of a decree of dissolution. In one case there was an unmerger; in the other there would be a dismemberment. In one case self-sufficient units were left to renew their previous independent existence; in the

other, parts which were not intended to exist apart would be left to a maimed existence of impaired efficiency. In one case the public is benefited by a restoration of competition which had formerly existed; in the other the effort to convert into competitors lines constructed as parts of one system would injure the public by substituting imperfect parts for a well-rounded whole.

(*b*) The formation and development of the Southern Pacific System was for lawful and justifying purposes. It was neither its purpose nor effect to eliminate competition.

While it may not be necessary for our case, we desire to show under this heading that it cannot be said that, by reason of the absence of any reason or necessity or useful purpose to be served by the construction of the Southern Pacific System, including therein the Central Pacific lines, it must be presumed that the union of the lines into one system had for its direct and intended purpose the suppression of any competition resulting therefrom.

The genesis of the Southern Pacific System, fully disclosed by the evidence and indicated under the previous heading, establishes this second point by showing that the competitive potentialities which form the basis of the alleged restraint in trade were not in existence at the time the common control was created. But there is still more to be said on the subject.

The "big four" were great men who had the vision,

but there is nothing in the record to justify the statement that they had in mind the Sunset-Gulf route when they gradually extended southward the Central Pacific line from Goshen. They built this extension in the name of the Southern Pacific Railroad Company, doubtless for financial reasons and because of the land grant to that company. They had in mind two purposes, to feed the Central Pacific and to meet the Texas and Pacific at Yuma. It does not appear how much of the Texas and Pacific had been constructed when the Southern Pacific line reached Yuma in September, 1877, but the Texas and Pacific was certainly not then in sight nor was the prospect very encouraging, since it did not reach the vicinity of El Paso until 1882. Yuma was not a desirable terminus and the mining fields of Arizona were inviting, so the line was extended into Arizona in 1879. Exactly when the idea of a through coast to coast line under one management was first conceived is not known. The evidence shows that the line was extended through New Mexico to El Paso, the road of the Galveston, Harrisburg & San Antonio Railway was constructed between El Paso and east of San Antonio, and connecting lines between Houston and New Orleans acquired, together with a steamship line from New Orleans to New York; so that on February 1, 1883, there was opened for business a through mixed rail and water line between San Francisco and New York, with the then unique advantages and efficiency of unified management. Until the lease to the Southern Pacific Company in 1885, this through line, the

Sunset-Gulf route, was operated by the Central Pacific Railroad Company. It had been constructed in connection with the Central Pacific lines, beginning as an extension of those lines, which formed an essential part thereof.

That the only enterprise in contemplation for several years after the formation of the system (first called Central Pacific, now Southern Pacific) was the construction of lines to develop Southern California and to feed the Central Pacific from the traffic thus developed, and that the line from Tehachapi to Yuma was regarded as a branch of the main line to the Needles, is shown by the following extracts from reports to the Secretary of the Interior by the Southern Pacific Railroad Company and the Central Pacific Railroad Company, the reports being generally copies of reports of the President to the stockholders and of reports of officers of the companies to the President.

In the report of the Southern Pacific Railroad Company of California for the year ending June 30, 1874, Mr. Huntington, the President, referring to the consolidation of October 12, 1870, declared (V Vol. Defendants' Exhibits, p. 1717):

> "The object of the new corporation was to construct, equip, maintain and operate a line of railroad from the city of San Francisco to a point on the Colorado River, in the southeastern portion of the State, a distance of, say, six hundred and twenty-nine miles, *with a branch from Tehachapi Pass to the Colorado River, at or near Fort Yuma,* a distance of, say, three hundred and fifty-three miles." (Italics ours.)

Further on in his report, under the heading of "Prospective Business of the Road," we find the following (*Id.*, pp. 1719-1720):

> "*Fourth.*—The general location of the Southern Pacific Railroad is peculiarly favorable for developing and controling a large and remunerative miscellaneous business, for it occupies almost the only passes through which a railroad extending from San Francisco to the Colorado River can be built, and must therefore command the entire business between San Francisco and the southern portion of California, as well as northern Mexico and Arizona. At the Colorado River it will meet the Texas & Pacific Railroad, and when this connection is made it will give your road a direct communication by rail with all the southern and southwestern portions of the United States, and the shortest line from San Francisco to New Orleans and the country bordering the Gulf of Mexico, over which you may look for much of the surplus grain from the southern half of California to pass on its way to the European market.
>
> "*Fifth.*—The country tributary to your road embraces nearly one-third of the entire State of California, say 50,000 square miles. In traversing this large extent of country the road passes through some of the finest valleys in California, such as the San Jose, Santa Clara, Pajaro, Salinas, Tulare and the large and fertile valleys south of the Sierra Madre, in the counties of Los Angeles and San Bernardino. The soil in those valleys is exceedingly fertile, and produces all kinds of vegetables and grain of the

temperate zones, and most of the fruits of the semi-tropical regions, such as oranges, lemons, limes, olives, apricots, figs, etc., in great abundance. Recent experiments in the culture of tobacco, near Gilroy, where some four hundred acres were planted the past season, have shown that the soil in that part of the State is peculiarly adapted to that crop, the yield per acre being from 1,500 to 2,000 pounds of a superior quality, equal to the best Havana, and from 2,500 to 3,000 pounds per acre of the coarser varieties. Recent experiments have also demonstrated that jute, ramie and cotton can be grown in great abundance along the line of your road, for which the producer will always find a ready sale and remunerative prices, as these products will bear transportation and thus have access to the world's markets.

"Among the foot-hills and on the slopes of the mountains are vast tracts of land abounding in wild oats and native grasses, which are very nutritious, and afford pasturage for sheep and cattle throughout the entire year; and the temperature is so mild, even in winter, that shelter is seldom required. Nearly all the land in the foot-hills also produces the grape in great abundance, and much of it is considered the best vine-land in the world, as it never fails to yield a crop. There are also immense tracts of timberland covered with red-wood, red-cedar, pine and other varieties, which will afford an extensive lumber business for the road; in short, the country traversed by and tributary to the Southern Pacific Railroad has almost every

variety of land adapted to every branch of agriculture, with a mild and healthful climate, and is already attracting the attention of emigrants from the Eastern States, as well as from the nations of Europe, and is being rapidly taken up along the line of the road, and even in advance of its construction.

"With all these vast and varied interests awaiting the construction of your road, the villages and cities with their rapid increase of population, the fertile valleys with their great abundance and variety of agricultural resources, the forests with their wealth of lumber, the mines with their vast supplies of coal and untold millions of the precious metals, we think you may reasonably hope for satisfactory dividends on your investments when the road is completed."

From the report of the Central Pacific Railroad Company for the year 1873, we extract the following statements regarding the San Joaquin Valley arm of the Central Pacific (the line from Lathrop to Goshen) and its extension under the name of the Southern Pacific Railroad Company (II Vol. Defendants' Exhibits, pp. 1742-3):

"The latter diverging from the main line at Lathrop runs southeasterly in a nearly direct line for a distance of one hundred and forty-six miles to Goshen, where it connects with the Southern Pacific Railroad, which is already constructed from this point to Delano, a distance of some forty-one miles further south, and is

ultimately, as I understand, to be extended southerly through the State to the Colorado River, thus forming an important feeder to this part of your road, making it, in fact, a link in the great Southern transcontinental route, which must eventually find its most eligible terminus at San Francisco Bay. In view of its importance in this respect, as well as with regard to the heavy local traffic which must result from the development of the agricultural resources of this valley, the road has been constructed upon a maximum grade of ten and one-half feet per mile ascending and with a grade of but five and one-fourth feet per mile against freight descending the valley. The alignment is also very favorable, the total curvature after leaving Lathrop being, in a distance of one hundred and forty-six miles, but two hundred and fifty-five degrees, with a minimum radius of five thousand seven hundred and thirty feet.

"This great valley, extending from the confluence of the San Joaquin and Sacramento Rivers, southeasterly for a distance of two hundred and forty miles, with a width of from sixty to seventy miles, nearly all susceptible of cultivation is as yet sparsely populated, though the large grain shipments from the comparatively small area under cultivation fully attest its value as a grain-producing region.

"With the completion of the system of irrigation already in contemplation by resident and foreign capitalists, and for which the topography of the country is admirably adapted, the

population of this valley must rapidly increase; and when this is accomplished, its productive capacity can hardly be over-estimated."

In the report for 1876 we find the following reference to the traffic expected from the lines south of Goshen (*Id.*, p. 1755):

"While the traffic of the Visalia and Tulare divisions is comparatively light, it is very encouraging to note the extensive arrangements which are being made for irrigation and for general agricultural development all along the line, especially in the rich region of the State embraced in Fresno, Tulare and Kern counties; which development is made possible by the extension of the road through the San Joaquin Valley to Caliente, three hundred and twenty-four miles from San Francisco. This road offers to that section of the country the long-desired outlet to market, and a large increase of business may be expected in the near future from it, and the rich mining districts beyond."

The traffic expected from the extension into Arizona and New Mexico is referred to in the report for 1877 as follows (*Id.*, p. 1757):

"The completion of that portion of the Southern Pacific Railroad (leased to the Central Pacific Railroad Co.) to the Colorado River, secures to that company the traffic to and from Arizona, which promises to be very large, and as the road shall be extended beyond the river, through this rich mining territory, it will largely

develop and secure the trade also of New Mexico and the adjacent country.

"The looked for remunerative business over this long line will, we confidently believe, materially increase the earnings for the current year, and more than compensate for the loss of traffic we may expect from the short harvest, consequent upon the drouth more or less affecting the southern portion of the State."

The statements in these reports are corroborated by the testimony of Mr. Chambers (Vol. III, pp. 939, ffg.). They not only show that the alleged competitive conditions, the supposed elimination of which is the basis of this suit, were not in existence or contemplation at the time when the common ownership or control complained of originated, but they show also that the construction of the line which brought about the alleged competitive conditions was a natural, normal railroad development with the usual and justifying purpose of reaching new fields and feeding existing lines.

There is no competent evidence in the record to support a finding that, when it was determined to build or secure a line through to New Orleans and thence to New York, the controlling motive was to effect a restraint of trade by eliminating competition. The natural inference from the competent evidence is that the extension of the line beyond Yuma was due to the breakdown of the Texas and Pacific enterprise, and to the desire to reach a promising field of business in Arizona and New Mexico, and that when the adven-

ture had proceeded so far the practicability and advantages of a through route to the Atlantic coast, under unified management, dawned upon the owners of the Central Pacific and Southern Pacific Railroad companies. What these advantages were has been explained in the testimony of Mr. Spence and other witnesses. In the then stage of development of the railroad business, the arrangements for handling through traffic over several independent connecting roads did not produce good service. It had not been found possible, and it did not seem possible, to secure that degree of co-operation necessary to afford satisfactory service over the numerous independent companies concerned in the all-rail route across the continent. Neither in time nor in the character of the service nor in the settlement of claims or otherwise was the service calculated to attract or develop transcontinental traffic. The men in control of what was then the Central Pacific System, and is now the Southern Pacific System, believed that by means of a through line under a unified management great improvements in the service, with consequent increase in the volume of the traffic, could be effected, and to this belief is due the Sunset-Gulf route. Its construction was abundantly justified. It rendered better service than had been before considered possible. It developed an enormous traffic. And, what is more important, it set a standard of service which the all-rail lines had to meet. It conferred an inestimable benefit both in opening up new lines of traffic and in applying the spur of competition

to existing lines. It not only did not close the all-rail line via Ogden, but it aroused the rail lines engaged in transcontinental traffic to the necessity of better service and forced the Eastern connections of the Central and Union Pacific, as well as the Santa Fe and its connections, to join in arrangements which resulted in vastly improved service (Spence, III Vol., pp. 1028-9, 1041-2). To charge the railway system or its management with lessening competition and restraining trade by reason of bringing this new competitor in the field seems absurd, and yet, in the last analysis, this is what the Government's case under the Sherman law really amounts to.

Prior to the lease to the Southern Pacific Company in 1885 the Benicia Cut-Off, the line from Tracy to Martinez and various other additions and extensions had been constructed as parts of the system. These new lines did not belong to the Central Pacific, but were so connected with its lines as to improve the service over them, by affording shorter and better routes or by relieving congestion through alternative routes.

The situation then in 1885, at the date of the lease complained of, was that the Central Pacific lines and the other lines of the system were essential constituents of the new through line, the Sunset-Gulf route, and that the two sets of lines were also jointly used, and necessarily so used, to give the best service on the through line via Ogden as well as locally. The controlling, dominant purpose, and the lawful purpose, of the lease to the Southern Pacific Company was to afford

a convenient means of operating together lines which were already parts of a system, which had been conceived and constructed as parts of a system, which were necessary to each other, and the separation of which would cripple the service on all parts of the system. To say that the lease made at that time and under those circumstances had no justifying cause or lawful purpose, but must be regarded as having for its main and direct purpose to destroy previously existing competition between the leased lines is absurd.

What has been said of the lease of 1885 applies *a fortiori* to the acquisition by the Southern Pacific Company in 1899 of the stock of the Central Pacific Railroad or Railway Company. The taking over of this stock was, moreover, necessary to effect the readjustment of the affairs of the Central Pacific Railroad Company and the settlement of its indebtedness to the United States. And such readjustment and settlement was necessary to prevent the disruption of the Southern Pacific System, the separation of lines which had been constructed together, and the immense loss to the Southern Pacific Company and injury to the public which would result from such dismemberment of a long established system. The Government, which was practically a party to the plan of readjustment involving the stock purchase and knowingly profited by it, should be the last person to make the absurd charge that the direct object and effect of the purchase was to suppress competition between the parts of the system standing in the name of the Central Pacific and

the parts standing in other corporate names. The two sets of lines which were born of a common parentage and had grown up as members of one family, were already yoked together under a one hundred years lease, and in the only respect in which they are charged to be naturally competitive, *i. e.*, in respect to the Ogden and Sunset-Gulf routes, their union had not then, nor has it at any time since, prevented or created the power or a motive to prevent the most active and vigorous competition. Read in this connection Mr. Spence's summary statement of the value to the Southern Pacific System of the Central Pacific lines (III Vol., p. 1070).

Excerpts from the voluminous testimony and documents adduced before Committees of Congress at various times seem to be relied on by the Government to overcome the evidence afforded by the testimony of witnesses produced in this case by defendants or to supply the lack of such evidence by the Government. We submit that testimony before Congressional Committees is not competent evidence in this case, and that, were it otherwise, the excerpts in question are not inconsistent with, and certainly do not overcome, the evidence adduced in this case in support of what has been said above respecting the history, nature and purposes of the Southern Pacific System. The investigation which culminated in the report of 1887 had for one of its objects to ascertain whether the United States, as a creditor of the Central Pacific Railroad Company, had not a claim against Huntington, Stanford, Crocker and Hopkins or the Southern Pacific Company, on the the-

ory that the revenues or property of the Central Pacific had been diverted or sacrificed. Hence, the efforts of those concerned were directed to show that all that had been done was done to "protect" the Central Pacific lines by having the feeders and extensions southward in "friendly hands". Considering the conditions we have shown as existing on October 12, 1870, the acquisition by the "big four" of the lines of the Southern Pacific Railroad Company then in being or in contemplation is not tainted with illegality even if we assume *at that early date the existence of a desire to protect the Central Pacific Railroad Company by having in "friendly hands" a then unthought-of line of railroad.* There is no force in the contention that the Southern Pacific System is proved to be an unlawful combination in violation of the Sherman law of July 2, 1890, because there is found in some public document or in some letters of questioned authenticity something tending to show that in the late seventies, when the failure of the Texas and Pacific to build its road to Yuma within the required time had caused the extension of the Southern Pacific Railroad across Arizona and New Mexico, Mr. Huntington and his associates opposed the granting of additional government aid to the Texas and Pacific to build a parallel road. They had constructed their road through the deserts without government assistance. Their natural protest against a subsidy in bonds, in addition to a land grant, being accorded the Texas and Pacific to help it parallel their road through the deserts would not have violated the Federal Anti-

Trust Act, if it had been on the statute books at that time. It is certainly not a continuing offense so as to constitute a violation of a law enacted twelve years afterwards.

Of the same character and even less entitled to any consideration are the minority reports and documents annexed thereto, showing hostility to the Southern Pacific System by some people in California twenty years ago. It redounds to the credit of the Southern Pacific Company that its conduct has been such as to overcome any hostility which might have existed and so completely to disprove the prophesies of evil of an earlier day that the strongest opponents now of the proposed dissolution are the people it serves on the Pacific coast. We have faith to believe that this case will be decided by the facts as they are disclosed by the evidence contradictorily adduced in this case and not by the slander and gossip and political accusations of a by-gone era.

When a man's character is assailed or his motives impugned, he has a right to be judged by his past life. The history of the Southern Pacific System from the beginning is found in detail in the evidence. It is a sufficient refutation of the charge that its purpose or effect was to suppress competition or establish a monopoly. If the object of the system or its authors was to neutralize competition between the Ogden route and the Sunset-Gulf routes, why is it that the Central Pacific line has always been so maintained and operated in connection with the Union Pacific as to make the

through line a most active, vigorous and successful competitor of the Sunset-Gulf lines? If the object was to secure a monopoly of transcontinental traffic, why do we find the relinquishment of one of its lines to the Santa Fe, and the consistent policy of liberal arrangements for through traffic with all connections, so that every new junction marked the entrance of an able competitor in the field of transcontinental carriage? If the object was to establish a system which would dominate the field, why is it that from October 12, 1870, to the present time, we find only a gradual, normal growth from within, with no combinations or absorptions of competing lines?

In endeavoring to show that the common ownership or control to which the Southern Pacific System owes its existence was not originally tainted by any illegal purpose, we are not to be understood as conceding that proof of such an original taint is proof or evidence that such common ownership or control has produced or has a tendency to produce conditions prohibited by the Anti-Trust Act. A suit, brought twenty-four years after the enactment of that law, to remove an alleged existing restraint upon commerce attributed to a so-called combination originating nearly twenty years before the law was passed, essentially depends upon proof of the present existence, as a result of the so-called combination, of an undue and unreasonable restraint of trade. In the absence of such proof, and *a fortiori* in the face of proof to the contrary, the Southern Pacific System cannot be condemned by reason of the unrealized expec-

tations or of the unaccomplished or abandoned purposes of the original parties. We take it that the Court, if it finds it necessary to determine the inherent nature of the common control in question, will not deem it worth while to consider uncertain evidence of what might have resulted or might have been intended to result from the common control when it has before it the actual results of forty years of its continued existence. Conjecture and prophecy yield to the demonstration of conduct and experience.

(*c*) The result of the union under one control and management of the Central Pacific lines and the other lines now composing the Southern Pacific System, unlike the amalgamation of the Union Pacific and Southern Pacific systems, was not to destroy active competition previously existing between the lines of railway concerned. Not only so, but the inclusion in one system of the lines in question does not destroy or create a motive for destroying the competition alleged in the petition, namely, competition between alternative through routes, one of which is made up of lines constructed under the regime of the common control complained of.

It cannot be said that on October 12, 1870, when the two sets of lines, one partly *in esse* and the other practically altogether *in futuro,* passed under the common control and management under which they have remained to the present day, there was any previous competition to be destroyed, since one of the sets of

lines was not only not in existence, but, as to the alleged competitive portion, was not even in contemplation.

It is not alleged in the petition, and it was not attempted to be proved by the testimony of witnesses, that the lines standing in the name of the Central Pacific, considered by themselves, are competitive with the other lines of the system. In its opening testimony petitioner's questions to its witnesses were directed to showing that the through line via Ogden, formed by the Central Pacific line and the Union Pacific and eastern connections, was a competitive route with the line formed by other lines of the Southern Pacific System through El Paso and New Orleans or Galveston and thence to New York. As we read the petition, the charge as to the natural competition prevented or destroyed is confined to competition between the Ogden route and the through rail and water route between San Francisco and New York, designated in the pleadings as the "Sunset Route" and in the testimony as the "Sunset-Gulf route". At any rate, in the discussion to follow, we shall deal mainly with the competitive relations between the Ogden and Sunset-Gulf routes, as defined, because the complaint seems to be confined to those two routes and because, if we show that the Government has made out no case in respect to the mixed rail and water line wholly owned by the Southern Pacific Company, it has certainly made no case in respect to the all-rail routes via El Paso, formed by the Southern Pacific line to El Paso and railroads of other companies *subsequently* constructed and connected with

the Southern Pacific line to form alternative through routes.

The petition charges that "the lines now owned by the Central Pacific Railway Company, in so far as then existing, were operated prior to 1885 in connection with the lines of the Union Pacific Railroad Company as a continuous connecting route between the San Francisco and the Missouri River, with connections eastward to the Atlantic Ocean, and were in competition with the lines now operated by the Southern Pacific Company in interstate and foreign transportation" (clause IV, p. 14 of the printed petition, I Vol., p. 8), and that the purpose and effect of the lease to the Southern Pacific Company in 1885, as well as the acquisition of the Central Pacific stock in 1899, was to prevent this competition (clause V, I Vol., p. 9). Among other defenses to this charge, the defendants denied (clause IV of answer, I Vol., p. 29):

> "* * * that the line owned by the Central Pacific Railroad Company as operated prior to 1885, in connection with the line of the Union Pacific Railroad Company, was in competition with the lines now operated by the Southern Pacific Company in interstate and foreign transportation, except that both prior and subsequent to 1885 the through route or routes formed by the line of the Central Pacific Railway Company from San Francisco to Ogden in conjunction with connecting railroads, including the Union Pacific Railroad Company, and their eastern connections, have carried traffic in competition with the said Sunset

> Route and with other transcontinental lines; but they deny that the common control of the Central Pacific Railway Company and the said Sunset Route, which has always existed, and under which the said Southern Pacific System of lines (always included therein being the line of the Central Pacific Railway Company) were originally constructed and have subsequently grown and developed by usual and normal means, as hereinafter more fully stated, has prevented or created the power to prevent competition between said through routes or constitutes a restraint of trade or a monopoly or an attempt to monopolize trade, within the prohibition of the said act of July 2, 1890, or otherwise."

We desire to preface what we have to say under the present heading by the statement that, in undertaking to show that the inclusion of the Central Pacific lines and the other Southern Pacific lines in one system has not prevented or created an incentive or the power to prevent active, vigorous and effective competition between the two through routes in question, we are going beyond the necessities of our case. We have already shown that the competition referred to in the petition is "natural" competition between the original nucleus of the system and parts constructed after the formation of the system, and that is sufficient to dispose of the case. The Federal Anti-Trust Act has nothing in it analogous to the after-acquired property clause of a mortgage in virtue of which a union of railroads, lawful originally because between non-competitive

lines, becomes unlawful whenever at any subsequent stage of development lines are constructed which under independent ownership might have competitive relations with other parts of the system. Such a construction of the law, if not itself condemned by the rule of reason, would condemn to disintegration every railway system in this country. It would be equally fatal to large industrial enterprises, all of whom have doubtless constructed plants in different states which under independent ownership might compete with each other.

Hence, by undertaking to show that the inclusion of the Central Pacific lines in the Southern Pacific System has not prevented the competition referred to or intended to be referred to in the Government's petition, and that its separation from the system would not benefit the public by any appreciable addition to the general stock of railroad competition, we must not be understood as conceding that the possibility or even certainty of an addition to existing competition in the field of influence of the Southern Pacific System to result from its proposed disruption would suffice to make out the Government's case or even to put the Company on the defensive.

We enter upon the discussion of the effects upon competition of the Southern Pacific System, with the Central Pacific lines included, the more willingly because it will show that in the remote contingency of the decision of this case ultimately depending upon the question—Does the Southern Pacific System, as at present constituted and under the existing transconti-

nental shipping conditions, constitute such a monopolistic aggregation, such an undue and unreasonable restraint of trade, as to come within the condemnation of the Federal Anti-Trust Act, irrespective of the date and manner of its origin and of the character of its growth and development—the Government cannot expect to secure the necessary affirmative answer. Of course the date and manner of the origin of the Southern Pacific System and the character of its growth and development are facts which cannot be disregarded, and which, when regarded, afford adequate defense against the Government's attack. But the impossibility of answering the above question in the affirmative, and so the impossibility of the Government making out any part of a case under the Sherman Law, becomes manifest when, in addition to showing that from very small beginnings the system grew from within gradually by construction to its present dimensions, we further show that the competition it is charged with destroying, that between two alternative routes in each of which portions of its system participate, happens to be of such character as, notwithstanding such participation, to enjoy an active, vigorous and effective existence.

That the union under one control and management of the Central Pacific lines and the other Southern Pacific lines in one system has never prevented actual competition, "sharp, well defined and vigorous", between the Ogden route and the Sunset-Gulf route, is established by the record in the following ways:

(1) It is admitted in the Government's petition.

In the last paragraph of Clause IV, on page 8, Vol. I, of the petition, quoted above, it is alleged that the Central Pacific Railroad Company was operated *prior to 1885* in connection with the Union Pacific and eastern connections *in competition with* the lines now operated by the Southern Pacific Company. This is tantamount to the allegation that the Ogden route was being operated prior to 1885 in competition with the Sunset-Gulf route, which was opened for business in 1883. But according to all the witnesses, including those of petitioner who were questioned on the subject (see testimony of Monroe, I Vol., pp. 386-7), the Central Pacific lines and the lines composing the Sunset-Gulf route, from the date of the opening of the latter route, were operated under a common control and management and were then just as much parts of one system as they were under the Southern Pacific lease after 1885. The only difference was the change of name from Central Pacific System to Southern Pacific System. Hence, the allegation referred to is a judicial admission that a common control and management of the Central Pacific lines and of the lines composing the Sunset-Gulf route is not incompatible with the operation of the Ogden route, including the Central Pacific line, and the Sunset-Gulf route in competition with each other.

It must be presumed that by "competition" the Government meant actual, beneficial competition, the kind of competition which it would be satisfied to have continue after 1885. Well, it *has* continued according to all the witnesses.

(2) It is conclusively established by the record in the Union Pacific Merger Case.

We have already shown that in the former case the Government asserted in its petition, and the Union Pacific and its owned Southern Pacific denied in their answers, that prior to the merger in 1901 there was active competition between the Ogden route and the Sunset-Gulf route; that the Government in its brief argued that it had proved by practically unanimous testimony that such competition existed and that "there was the same incentive to active, energetic competition between these lines that there would have been had the Southern Pacific not owned the line between Ogden and San Francisco" (p. 39 of Brief on the Facts); that this Court, adopting the Government's contention, held that prior to the merger there had been competition, "active, well defined and vigorous" between the two routes, notwithstanding the Southern Pacific's ownership of the Central Pacific lines, which competition was effectually destroyed by the merger; and, wholly or partly because of such holdings, the merger was declared unlawful.

Now a fact which in the former suit the Government alleged in its pleadings, proved by evidence, and contended for in argument, and which the Court decided, and the decision of which was one of the material steps to the final conclusion of the Court, cannot be denied by the Government in this suit. Hence, we have offered the record in the former suit as conclusive evidence of the fact that the ownership of the Central Pacific lines

by the Southern Pacific Company had not prevented sharp, vigorous and well defined competition for traffic via Ogden and via the El Paso routes and had not created the motive or power to prevent such competition, up to the time of the merger in 1901 (Vol. III, p. 932).

If such competition existed prior to the merger, it exists now, for the uncontradicted evidence is that the competition is even more active since the unmerger than it was before the merger. As to the absence of motive or power to prevent the competition, the Supreme Court so held when it declared, for reasons stated, that the competition in question did not exist by the mere grace or sufferance of the Southern Pacific Company.

Counsel for the Government will hardly question the correctness of our statements as to what was decided by the Supreme Court in respect to the existence of competition for through business via Ogden and via the Sunset-Gulf route and the destruction of that competition by the merger of the two systems. But that such was the decision of the Court will clearly appear when the opinion is read in the light of the pleadings and the brief of counsel for the Government. We have seen that in its petition the Government alleged the existence of the active competition between the Ogden and the Sunset-Gulf routes and its elimination by the merger of the two systems, and supported its allegations by the testimony of numerous witnesses. In its opinion the Supreme Court referred to the

Ogden route as the route over which the Union Pacific's through traffic to California was carried (226 U. S., p. 89), and said (p. 93), that the Ogden route was the one used largely, if not exclusively, by the Union Pacific for traffic to and from California. Hence, it was undoubtedly referring to competition between the Ogden route and the Sunset-Gulf route when it declared (pp. 86-7)

> "A large amount of the testimony in this voluminous record was given by railroad men of wide experience, business men and shippers, who, with practical unanimity, expressed the view that prior to the stock purchase in question the Union Pacific and Southern Pacific systems were in competition, sharp, well-defined and vigorous, for interstate trade. To compete is to strive for something which another is actively seeking and wishes to gain. The Southern Pacific, through its agents, advertisements and literature had undertaken to obtain transportation for its 'Sunset' or southerly route across the continent, while the Union Pacific had endeavored in the same territory to have freight shipped by way of its own and connecting lines, thus securing for itself about 1,000 miles of the haul to the coast."

And traffic for which the Ogden route and the Sunset-Gulf route offered alternative routes was in the mind of the Court when it said (pp. 88-9):

> "Before the transfer of the stock this traffic was the subject of active competition between these systems, but by reason of the power arising from

such transfer, it has since been placed under a common control. It was by no means a negligible part, but a large and valuable part, of interstate commerce which was thus directly affected.

"The fact that the Southern Pacific had a road of its own from the Gulf to the Pacific Coast did not prevent competition for this traffic. The Union Pacific and its connections were engaged in the same carrying trade, and as a matter of fact were competing for that trade, by all the usual means of competition resorted to by rival railroad systems. As this court said, speaking by Mr. Justice Holmes, in *Swift & Co.* v. *United States, supra,* 398: 'Commerce among the States is not a technical legal conception, but a practical one, drawn from the course of business.' That commerce, as conducted from the East to the Pacific Coast, was in a substantial part the subject matter of rivalry and competition between these two systems. Since the stock transfer the companies have common officers and the rival soliciting agencies have been for the most part abandoned."

The decision of the Supreme Court as to the absence of domination by the Southern Pacific Company over the Ogden route has lost none of its effect by reason of any subsequent change in conditions. The changes which have taken place all tend to confirm the conclusion reached in the former case. The control of the San Pedro line to Los Angeles has doubled the retaliatory powers of the Union Pacific. The completion of the Western Pacific gives it a connection paralleling the Central Pacific. The amendments to the Interstate

Commerce Act empowering the Interstate Commerce Commission, not only to compel the making of through routes and joint rates by connecting lines, but to fix the divisions of the joint rates, and requiring the issuance of through bills of lading and the observance of shippers' routing directions, have reduced to a negligible quantity the control over a through line by a railroad company owning a link thereof. And such control is reduced to the vanishing point in view of the plenary powers over connecting lines conferred on the Commission by the Transportation Act, 1920.

It is now the well settled construction of the Federal Anti-Trust Act that it prohibits only contracts and combinations which amount to an unreasonable or undue restraint of trade in interstate commerce. Can a restraint resulting from the common control complained of in this case be said to be unreasonable or undue, when it does not prevent or create a motive or power to prevent competition, "sharp, well defined and vigorous"? If the competition which existed unrestrained by the inclusion of the Central Pacific line in the Southern Pacific system was sufficient to make the elimination thereof an unreasonable or undue restraint of trade, does not this of itself show that the competition had not been previously eliminated to any unreasonable or undue extent?

Is there not a fatal inconsistency between a suit claiming that certain prior existing competition had been eliminated by a certain combination, and a second suit claiming that such competition had already been

eliminated by a preceding combination? In its first suit the Government charged that the competition existing prior to 1901 between the Ogden route and the "Sunset route" had been eliminated by the merger of that year. In the present suit the Government charges that the competition between the two routes was eliminated by the Southern Pacific's control of the Central Pacific, which took place years prior to 1901. The existence of such competition in 1901 was an essential part of the first case. Its destruction long prior to 1901 is an essential part of the present case.

(3) It is established by the findings of the Interstate Commerce Commission in its report upon the application of the Southern Pacific Company to be permitted to continue to operate the water line part of the Sunset-Gulf route (supra).

(4) It is established by the unanimous testimony of a large number of witnesses specially qualified to testify on the subject.

It was established by indisputable evidence that as a matter of fact there had been at all times (except during the merger) active, vigorous and successful competition between the Ogden and Sunset-Gulf routes, and that as a matter of fact there had never been any attempt to use the common control of the Central Pacific line and the Sunset-Gulf line to prevent or blunt the sharpness of the competition (*supra*, 17). It was further shown by competent and uncontradicted testimony that this common control did not create a motive or incentive to prevent or reduce this competition. Mr.

Kruttschnitt and Mr. Spence testified with convincing clearness on this point, and no attempt was made to contradict them (II Vol., 733-4, and III Vol., 1407. See to same effect Chambers, III Vol., pp. 950 ffg.). Even under conditions existing in 1901 and prior thereto the Supreme Court found that the active competition then existing between the two routes was not merely permissive on the part of the Southern Pacific Company. To close the Ogden gateway by refusing to join in through rates or to make reasonable divisions is legally impossible under the provisions of the Interstate Commerce Act and the Pacific Railroad Acts. To impair the service over the Central Pacific line or to fail to keep it up to the highest standard would be suicidal, since the benefit to the Southern Pacific Company in respect to the comparatively small proportion of traffic competitive between the two routes would be nil and the injury to it in respect to the immensely larger volume of traffic, non-competitive with the Sunset-Gulf route but the subject of intense competition between the Ogden route and other all-rail lines, would be certain and very great. Either course, moreover, would excite the Union Pacific to retaliatory measures, and would divert to rival roads the enormous volume of westbound traffic which that company now delivers to the Southern Pacific line at Ogden.

The direct testimony on the subject is corroborated in many ways. For example, the fact that the Central Pacific-Union Pacific line is, in the opinion of the witnesses, the strongest and best maintained of the trans-

continental lines is a tribute to the standard of service maintained. The evidence showing the satisfactory relations which have always existed between the Union Pacific and the Southern Pacific in respect to the operation of the through line via Ogden strongly negatives any neglect of service over the part west of Ogden. The successful efforts of the all-rail lines, including the Central Pacific-Union Pacific and eastern connections, to meet the initial success of the Sunset-Gulf route, due to its unified management, affords convincing proof both of the existence of actual competition between the two routes and of the beneficial effects to the public of such competition in the way of constantly improving service. Finally, there is Mr. Lovett's refusal to support the theory of the Government (which, after such refusal, it made no further effort to support) that the separation of the Central Pacific from the Southern Pacific System would be followed by better service west of Ogden or increase of traffic over the Ogden route (*infra*, pp. 144, 147).

In the face of such testimony it seems hardly necessary to call attention to the comparatively small extent of territory and traffic for which the Ogden route and the Sunset-Gulf route afford alternative routes. It is restricted territorially to traffic between Northern and Central California and the Atlantic Seaboard. It is further restricted by the fact that a large part of this traffic will not stand transshipment, and hence cannot move over the mixed rail and water line. As to all the remainder of the traffic, it is the subject not only of

active competition with other all rail lines and the Santa Fe-Mallory line, but of competition by the water lines through the Panama Canal, a competition which has come into existence since this suit was instituted, and the revolutionary effects of which were not known when the testimony for petitioner was taken. These Panama Canal carriers, at the time defendants' testimony was taken, dominated the situation (Spence, III Vol., 1066-8). No one reading Mr. Spence's testimony can fail to see how absurd it is to talk of any domination or control, or even of any appreciable influence, over the only traffic competitive between the Ogden and Sunset-Gulf routes which the Southern Pacific Company can exercise by reason of its ownership of the Central Pacific line, and how far from the truth it is to contend that such ownership can have any effect upon rates or upon competitive service in respect to traffic between California and Atlantic Seaboard territory.

Considering the foregoing, in connection with the interests of the Southern Pacific Company as the owner of the stock of the Central Pacific and the guarantor of its bonded debt, we submit that it must be taken as a fact, established beyond controversy in this case, that the common ownership or control complained of has not prevented competition or created an incentive or motive or the power to suppress competition or deprived the public of the benefits of competition in respect to service or otherwise. How essentially it differs in this respect from the combination of the Union Pacific and Southern Pacific systems is too clear for comment.

Neither the record in the former suit nor the evidence in the present suit permit counsel for the Government to contend that such competition as prior to the merger of 1901 existed between the Ogden and Sunset-Gulf routes continued thereafter unimpaired by the amalgamation of the two systems. When such a contention was urged by the Union Pacific, it was unmercifully ridiculed by the then counsel for the Government, who styled it "a fanciful idea * * * born out of the necessities of this extraordinary situation", "absurd on its face", etc. (Government's Brief on the Facts, p. 319, quoted from above under the heading of "The Brief and Argument of the United States", *supra*, p. 57).

It follows from the foregoing that there are two answers to the argument that the decision in the Union Pacific Merger case, inasmuch as it holds that the Union Pacific, being a link in the Ogden route, stood in a competitive relation with the Southern Pacific Company as owner of the Sunset-Gulf route in respect to traffic competitive to the two through routes, and inasmuch as it holds that the combination in 1901 between the Union Pacific and the Southern Pacific Systems destroyed this competition and thus violated the Sherman Law, is an exact precedent for a similar holding in the present case. If this argument is based on the assumption that the essential facts of the two cases are the same, that there is no essential difference, in respect to nature, purpose, effect on competition or otherwise, of the merger between the Union Pacific

and Southern Pacific systems and the formation of the Southern Pacific System by gradual, normal growth and development, with the Central Pacific lines as the original nucleus, then we answer that the argument is based on a false assumption, and rely upon what has been already written to show that practically the only feature in common between the two cases is that there was in each case a common control of a through line and of a part of another through line, the two through lines being capable of competing with each other. If the argument is based on the assertion that the mere fact of a common control of a through line and of a link in another through line which may or does compete with the first line constitutes of itself, without more, a restraint of trade within the prohibition of the Federal Anti-Trust Act, the answer is that the argument is based on an erroneous proposition of law, and we rely upon the manifest unreasonableness of such a construction, which would condemn every railroad system in the country (*supra,* p. 24, and *infra,* p. 127), and upon the implications of the Panama Canal Act Amendment and of the Acts of Congress authorizing the Southern Pacific Railroad Company to construct and operate lines to form links in two competing transcontinental lines (*supra,* pp. 32-33, and *infra,* pp. 126 ffg). Whether a railroad system which includes a divergent stem, forming in connection with other lines a through route that may compete for some traffic with the parent system, is unlawful or not depends upon the particular facts and circumstances of each case. The most im-

portant of these facts is the nature of the origin and development of the system; the effect on competition between the two routes may be an important feature, if the circumstances under which the divergent stem became a part of the system do not of themselves afford a complete justification. It would be difficult to think of any circumstances tending to disprove an unlawful restraint of trade which have not been shown in this case to exist in favor of the Southern Pacific System. This is true in respect to its origin, the manner of its growth, and its effect on transportation conditions.

In this connection we call attention to the testimony of Mr. Spence to the effect that it is quite a common characteristic of the railroad systems of this Company to have included in one system lines which form parts of alternative and competing routes of traffic, thus duplicating in all essentials the situation resulting from the inclusion in the Southern Pacific System of the Central Pacific line to Ogden. For illustration he took up seriatim the different systems of railroads which participate in the transportation of traffic across the continent and showed that each system included within itself different lines which form parts of competing routes for transcontinental traffic. In connection with his testimony there were filed in evidence maps of each system to which he referred. (Defendants' Testimony, III Vol., pp. 1070-7, and Defendants' Exhibits, numbered 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94; see testimony of Mr. Kruttschnitt, II Vol., pp. 737 ffg.) If the

Government is right in its contention that the inclusion in one system of lines of railroad which form parts of competing through routes is in violation of the Federal Anti-trust Act, then, to be consistent and impartial, the Government should at once institute suits to disrupt the numerous railroad systems which in like manner violate the law. Such a crusade to un-group the railways of the existing railroad systems of this country would be in startling contrast with the public policy announced in Section 407 of the Transportation Act, 1920 (Kruttschnitt, II Vol., p. 773).

(*d*) and (*e*) The separation of the Central Pacific lines from the Southern Pacific system would not benefit but would injure the public, and would be accompanied by consequences most injurious and unjust to the Southern Pacific Company.

It has been established by an overwhelming amount of testimony that the proposed disruption of the system would increase the cost and greatly decrease the value of the service which the public now receives from the Southern Pacific System, *both in respect to through and in respect to local traffic*. The lines and properties of both sets of lines enter into the Ogden route and the Sunset-Gulf route. The service via neither through route would be as efficient after the separation. The local service would be deranged and impaired. Operated indiscriminately as parts of one system, the two sets of lines avoid congestion by affording alternative routes, shorten distances, and make a one-line haul of what, after a separation, would be two or three-line

hauls. Their separation would necessitate duplication of facilities at enormous cost and by no feasible arrangement could the service equal in cost or efficiency the existing service. This is the natural consequence of the separation of two sets of lines which were constructed as interdependent parts of one system (Kruttschnitt, Vol. II, pp. 740-752, 799-800; Spence, Vol. III, pp. 1015, 1039, 1069; Chambers, *Id.*, pp. 946-950, 987-991).

That such would be the consequences of the proposed dissolution was not testified to only by officers of the Southern Pacific Company, although their testimony was accompanied by convincing detail. The opinion of the railroad officials is shared by unusually competent representatives of the shipping public, Mr. Eshelman, for a long time president of the California Railroad Commission (III Vol., pp. 877 ffg.; pp. 882 ffg.), and Mr. Lynch, who spoke not only for the merchants of San Francisco, but for the shipping interests generally of the State (II Vol., pp. 835, 865). There was no attempt to rebut the testimony of these witnesses. Hence, it must be accepted as an established fact in this case that the separation of the Central Pacific lines from the other lines of the Southern Pacific system would result in impaired service to the public rendered at greater cost. That it is neither required nor desired by the public may be inferred both from the testimony in the record as well as from the failure of the Government to produce as a witness a single shipper to complain of existing conditions or to advocate a change.

The evidence is barren of any suggestion of any compensating advantages to the public. The vast preponderance of the evidence is to the effect that the separation would not bring about any increase of competition or have any tendency to decrease rates. As to the effect of a separation upon rates, there was no attempt to contradict the proof offered by defendants, that local rates would probably be increased by the separation, and that through rates would not be affected. Mr. Spence demonstrated the absence of any effect on through rates when he showed that all the traffic competitive between the Ogden and the Sunset-Gulf routes was also competed for by the water carriers through the Panama Canal, who were the rate-making factor and who had already reduced the rates so low between California and Atlantic Seaboard territory as practically to put the all-rail lines out of the business (III Vol., pp. 1066 ffg.).

As to increase of competition to result from the separation, all that the Government has to rely upon is the opinion of Mr. Munroe and of a soliciting agent of the Union Pacific in Cincinnati territory, Mr. Connors, and the only reason for their opinion is the general theory, the more railroads the more competition! Mr. Lovett cannot be said to have directly committed himself either way; but his statements in respect to the unlikelihood of improvement in the service or business over the Ogden route to result from an independent or even a Union Pacific-owned Central Pacific is an indirect negation of the Government's contentions.

Any increase of competition is at most problematic, theoretical and improbable. It is opposed to the testimony of the host of witnesses who vouched for the present existence of active, vigorous and effective competition between the Ogden route and Sunset-Gulf route, to the testimony of numerous witnesses who told of the splendid service maintained on the Central Pacific line, as open to the public now as it could possibly be after a separation, to the testimony that the army of solicitors seeking to route traffic over the line through Ogden could offer better facilities and service to induce the public to patronize that route now than after a separation, and to the positive testimony of Mr. Kruttschnitt and Mr. Spence, supported by facts and reasons, that no increase of competition could reasonably be expected to follow a separation. If there was any doubt on the subject before, there is certainly none now since the decision of the Interstate Commerce Commission on the application of the Southern Pacific Company for permission to continue to operate the steamship line constituting an essential part of the Sunset-Gulf route (*supra*, p. 26). The Commission has unsurpassed information concerning trans-continental lines and traffic. It has declared that, notwithstanding the common control complained of, there exists "active and vigorous competition" between the Ogden route and the Sunset-Gulf route, and that the continued ownership and operation by the Southern Pacific Company of the railroad between San Francisco and Ogden and of the whole of the Sunset-Gulf route will not

exclude, prevent or reduce competition. And by the requirements of the statute the Commission was considering not only actual but possible competition.

It does seem absurd to contend for a dissolution of a railroad system, which was formed, as the Southern Pacific System was, without the destruction of any previously existing competition, on the theory that, by the disintegration of the system, it was possible, though not probable, that some increase of competition might result!

Because the Court was dealing with a combination between two great systems which had been competing in several fields, which had the effect of destroying that prior existing competition, which, being without justifying cause, was presumed to have had for its dominant purpose the elimination of competition, which was shown by the affirmative testimony of numerous shippers to operate to the prejudice of the public interest, which might be regarded as a part of a scheme to acquire a dangerous domination over commerce in respect to transportation, the Union Pacific Unmerger case is worthless as a precedent for the relief sought by the Government in the case at bar.

To secure an authority for the proposed dismemberment of the Southern Pacific System, the Government must find a case condemning as an undue and unreasonable restraint of trade a union of railway lines in one system which resulted from the original construction of the lines as parts of a system, which destroyed no prior existing competition, which was not shown to

have prevented any competition that would otherwise have existed, which, on the contrary, produced and continuously applied a competitive spur of peculiar efficacy, which did not tend to create monopolistic conditions or trade-restraining control, which was not complained of by any one except the Department of Justice, and the dissolution of which was shown by competent uncontradicted testimony would result in impaired service at greater cost, without any compensating advantages. The quest for such a case is manifestly hopeless, and so, we submit, is the Government's success in this suit.

V. The Government's case reviewed.

An analysis of the petition in this case makes it evident that the main reliance of the Government when it instituted this suit, and doubtless the reason which accounts for the suit, was the belief of the Department of Justice in the truth of the charges that prior to the common control complained of, alleged to have been effected by the lease of 1885, the Central Pacific lines and the other lines covered by the lease were competing lines or systems and that the purpose and effect of the common control was to destroy such competition. But it has now been shown that the common control began at least as far back as 1870, a date not only prior to the construction but prior even to the conception of the lines composing the Sunset-Gulf route. The authority of the Southern Pacific Railroad Company to build to Yuma was obtained in 1871. The idea of extending that line to El Paso and thence by connections to the Gulf was the slow product of developments in after years. Hence the common control not only destroyed no existing competition, but it is not chargeable with having been formed for the purpose of preventing expected competition. Moreover, defendants have been able to show that the Department of Justice was not only misinformed as to the origin of the common control which it was attacking but that it was also mistaken as to its destructive effect on competition. We need not repeat what has been written above as to the evidence in this case establishing the actual existence, with full vigor

and effect, of the competition which the Government alleged had been destroyed. In view of the contentions of the Government in the Union Pacific Unmerger case and the report of the Interstate Commerce Commission upon the application of the Southern Pacific Company for permission to continue to operate the through Sunset-Gulf route, notwithstanding its ownership of the Central Pacific lines, it cannot be said that the evidence upon which we rely represents simply the peculiar and erroneous views of the witnesses on the subject of competition.

The defense based on the origin and nature of the common control complained of is the defense which prevailed in the court below. It is independent of the question whether or not the inclusion of the Central Pacific lines in one system with the other Southern Pacific lines has prevented or reduced any competition. It is only in the event that the Government overcomes this defense and the several other defenses presented in the main brief that the question of the present effect of the common control on competition will become material. Assuming now, solely for the sake of argument, that the Government has surmounted all the other defenses, and that the controlling question in the case is whether or not the effect of the common control on competition between the Ogden route and the Sunset-Gulf route is such as to constitute an undue and unreasonable restraint of trade, the inquiry arises whether the Government can meet the evidence in this case, which is all against it and which is supported by the

Government's own contentions in a former suit and by findings of the Interstate Commerce Commission.

Will it avail the Government to contend that the competition which it referred to in the former suit, the competition which the Interstate Commerce Commission was dealing with in its report, and the competition which the witnesses were dealing with in this case, was competition between the Sunset-Gulf route and the Ogden route as a whole, whereas the competition the destruction of which it now complains is the competition of the Central Pacific part of the Ogden route?

This contention admits of several answers. It is not true that in the former case the Government left out of consideration the effect on competition between the two routes of the Southern Pacific Company's control of the line between San Francisco and Ogden, because in its Brief of Facts (p. 39) it said that "there was the same incentive to active, energetic competition between these lines that there would have been had the Southern Pacific not owned the line between Ogden and San Francisco". It is not true that the Interstate Commerce Commission was not dealing with the competition between the two routes which the Central Pacific line did or might contribute. On the contrary, it was dealing mainly, if not solely, with the competition which any rail lines *owned* by the Southern Pacific Company might make with the line between the Gulf ports and New York. It is not true that the testimony of the witnesses in this case as to the existence of active, vigorous, and effective competition between the two

routes is consistent with the contention that in estimating the sum total of such competition the contribution of the line between Ogden and San Francisco must be regarded as a minus quantity, a handicap rather than an aid in securing the movement of traffic over the Ogden route.

In these days competition between rail carriers consists largely, if not altogether, of competition in service. Now the service over the line between San Francisco to Ogden, whether offered to secure the vast volume of transcontinental traffic for which the Sunset-Gulf route does not offer an alternative route or to secure the less than 16% of the remaining transcontinental traffic which may move over the Sunset-Gulf route, is competitive service. No part of the traffic could be obtained except after the fiercest competition, and it was impossible, as well as against the interest of the Southern Pacific, to discriminate in respect to such service between traffic open to and traffic not open to the Sunset-Gulf route. Mr. Lovett was unable to say that the separation of the Central Pacific lines from the Southern Pacific System would be followed by any improvement in the service or any increase of traffic over the Ogden route, and this is tantamount to an admission that the service over the line between Ogden and San Francisco and the competitive striving for traffic over the Ogden route has not been handicapped by the Southern Pacific Company's ownership of the Central Pacific lines. The admission is by no means a generous one, when we consider that the deficiencies

of the Central Pacific line between Sacramento and San Francisco are supplied by rail lines and facilities belonging to the Southern Pacific Railroad Company, without which the Ogden route would be seriously handicapped in the fierce struggle for traffic participated in by many powerful competitors. In a case of this kind the Court will look at the substance of things. What the public are really interested in is the benefits resulting from the Ogden route being an actual and effective competitor for all transcontinental business it is capable of moving. Under present conditions such competition exists with a maximum efficiency of service and with consequent maximum results. With the Central Pacific separated from the Southern Pacific system the resulting competition would be conducted with greatly impaired service and naturally with a corresponding lessening of beneficial results, the only additional factor being the presence among the now forty or fifty solicitors for the Ogden route of a new man with "C. P." on his cap, and this would not be a real increase in numbers if "U. P." were joined to "C. P." Such an addition to the soliciting force would hardly compensate for the subtraction of facilities and lines essential to efficient service and effective competition. Can it be said that the maintenance of the present conditions and the prevention of the conditions which will follow the proposed separation amount to an undue and unreasonable restraint of trade?

The Government is forced by the necessities of its case to find some weapon which will overcome both the

defense based on the nature and origin of the common control and the defense that, irrespective of its nature and origin, the common control does not operate an undue and unreasonable restraint of trade. It attempts to do this by the contention that whenever it is shown that one railroad company owns a part or a link in each of two competing through lines, or whenever it is shown that some part of a railroad system forms, by connection with other railroads, a through line which is a competitor of the parent system, then, without more, a violation of the Sherman Law is conclusively established. The approval of such a proposition would be equivalent to finding that the railroad systems of this country, practically each and all, constitute unlawful restraints of trade (Spence, III Vol., pp. 1070-7). If, by wholesale pruning or dismemberment, a condition in harmony with such construction of the law were brought about, either the railroads would have to cease to build feeders or lateral extensions or the law requiring such branches and extensions to form connecting lines with other railroads would have to be repealed, or every few years the pruning process would have to be repeated; for a railroad company cannot have branches or divergent stems or lateral extensions without the formation of one or more through lines competing with that railroad and formed in part by one of its branches or extensions. Such a construction of the law would convict the Congress of the United States of authorizing, and encouraging by grants of land, the making of restraints of trade; for Congress authorized

the Southern Pacific Railroad Company, by the act of July 27, 1866 (14 Stat., 292, sec. 18), to construct and operate a line from San Francisco to Needles, to form part of the transcontinental line along the 35th parallel of latitude, and by the act of March 3, 1871 (16 Stat., 573, sec. 23), to construct and operate a line from San Francisco to Yuma, to form part of a transcontinental line along the 32nd parallel of latitude. And there is good reason for believing that Congress knew at the time that the Central Pacific and Southern Pacific Railroad companies were then under common control. That the Government had not, prior to the institution of this suit, found anything objectionable in the common control of or interest in a transcontinental line and a link in any other such line, is shown by a reference in the 1913 report of the late Attorney-General to the permitted acquisition by the Pennsylvania Railroad Company of some $38,000,000 of the stock of the Southern Pacific Company in exchange for Baltimore & Ohio stock. "No new combination in restraint of trade was created by the exchange, *since the Pennsylvania and the Southern Pacific systems are non-competitive,* and the same is true of the Union Pacific and Baltimore and Ohio." (Annual Report of the Attorney-General, 1913, p. 17.) We call attention to the similar relations between the "Sunset route", which reaches New York by the Morgan line of steamships, and the Pennsylvania Railroad, whose main line to Chicago forms the eastern link of a through all-rail route across the continent, on the one hand, and the

"Sunset route", terminating at San Francisco, and the Central Pacific, whose line to Ogden forms the western link of the same all-rail through route, on the other hand. In other words, the Pennsylvania line stands in the same relation to the Sunset-Gulf route on the east as the Central Pacific's Ogden line does on the west.

As the evidence shows that there are no peculiar objections to the inclusion in the Southern Pacific System of the Central Pacific line to Ogden, which may be regarded as a divergent stem or tangential off-shoot of the main line from Portland via San Francisco to El Paso and beyond, but, on the contrary, shows the presence of every condition which would make its inclusion unobjectionable, it is fair to subject the contention under discussion to the test of generalization, as we have done. We submit that its unreasonableness becomes manifest when it is expressed in general terms or when it is generally applied. Before the Southern Pacific System can be condemned because of the inclusion therein of the line to Ogden the Court must be prepared to condemn as unlawful all the class of railway systems having divergent stems.

With the element of destruction of prior existing competition out of the case, with the element of the prevention of competition subsequent to the alleged combination out of the case, with the element of power or motive to prevent competition out of the case, in the absence of any monopolistic absorption or trade-restraining control, is there enough material left

wherewith to construct a case of unlawful restraint of trade?

The Government essays to make out such a case on the theory that if the Central Pacific and the "Sunset route" had not been built by the same people, if they had not been developed as parts of the same system, if they had belonged originally to different owners, or if they were now separated and placed under different managements, there might have been or might be more active and beneficial competition in respect to transportation from and to points on the Pacific Coast than now exists. This, then, is what remains of the Government's case —an alleged contingent, uncertain, indirect, possible restriction of hypothetical competition. The argument in its support involves a pyramid of assumptions, based on no evidence, which is capped by an assumption in conflict with the evidence.

PART II.

DISCUSSION OF THE CASE UNDER THE PACIFIC RAILROAD ACTS.

Here again it is not the purpose of this argument to cover the whole case. But, on account of the importance and novelty of the questions involved, it is believed that something of value may be contributed to the presentation of the case by a discussion of some of the main points from more than one point of view. We shall endeavor first, by a consideration of the pleadings and the general scope of the evidence, to arrive at the precise question for decision; next, to point out the provisions of the law to be construed and applied; and then to show that the construction of the statute upon which the Government's case essentially depends is not justified by the language of the law and is not only not necessary to accomplish the purpose of the law but would give it a meaning and effect clearly not within the contemplation of Congress. It will be brought out in the course of the argument that the conditions now complained of as prohibited by the Pacific Railroad Acts have been in existence for over thirty years and during that period have been frequently brought to the attention of Congress and the Department of Justice through Congressional investigations and otherwise, but that it had never occurred to any one prior to the institution of this suit that such conditions, repeatedly the subject of public scrutiny and comment, were violative of the express require-

ments of the acts. The meaning now sought to be given the statutes was not discovered by successive Committees of Congress on Pacific Railroads or by successive Attorney-Generals, including the one in charge of the Unmerger Suit, or by the Union Pacific Railroad Company, the supposed sufferer for many years from the alleged illegal acts, and remained hidden and unsuspected until brought to light in the search for grounds upon which to divorce the Central Pacific from the Southern Pacific System.

I. The Government's case as defined by the pleadings and further restricted by the evidence.

The respects in which the Pacific Railroad Acts are violated, as charged in the petition, may be thus summarized (Vol. I, pp. 10-11):

(1) "In respect to traffic between points on the Atlantic and Pacific coasts and tributary territory, it is to the interest of the Southern Pacific Company to carry, and by reason of its control of the Central Pacific it has the power to and does carry, as much of such traffic as possible via its 'Sunset route', sending through the Ogden gateway only such portion thereof as it is unable to control for the 'Sunset route', thereby 'discriminating against the Central Pacific Railway Company'."

(2) "By reason of its greater interest in the 'Sunset route', the Southern Pacific Company, in the operation of the Central Pacific from San Francisco to Ogden as a part of a continuous line from the Missouri River to the Pacific Ocean, does not give to such line equal advantages and facilities as required by the Pacific Railroad Acts but discriminates against it by forwarding via the 'Sunset route' traffic originating or ending on the lines of the Central Pacific or in territory tributary thereto."

(3) "Through its control of the Central Pacific Railway Company the Southern Pacific Company pre-

vents joint traffic or prorating arrangements between the former and the Union Pacific Railroad Company, naturally its most important transcontinental and interstate connection."

(4) "The Southern Pacific Company so adjusts its freight rates and passenger fares on traffic originating in the Central Pacific territory north of San Francisco as to discriminate against transportation eastward over the joint transcontinental route of the Central Pacific and Union Pacific railroads and other eastern connections, thereby preventing competition and denying equal advantages and facilities as to rates, time, and transportation."

(5) "Maintenance by the Southern Pacific Company of Central Pacific Company's properties, moreover, compared with that of the 'Sunset route', is so inefficient as to discourage eastern travel and transportation via the Ogden route, and does not afford and secure thereto equal advantages and facilities as to time and transportation."

(6) "The Southern Pacific Company has heretofore, and does now, control, maintain and operate said Central Pacific Railway Company in the interest of its 'Sunset route' and adverse to the interest of the Central and Union Pacific companies, and has not and does not afford or secure to said Central and Union Pacific companies equal advantages and facilities as to rates, time, and transportation, all in violation of the Pacific Railroad laws."

Although the Government produced as witnesses the head of the Union Pacific Railroad Company, its Vice-President and chief traffic officer and its soliciting agents, and Mr. Schumacher, who was connected in early times with the Traffic Department of that Company in California, no attempt was made to prove by those witnesses, or by any other witness, that the Southern Pacific Company had ever, through its control of the Central Pacific Railway Company or otherwise, prevented or attempted to prevent joint traffic or prorating arrangements between the Central Pacific and the Union Pacific, or that the Southern Pacific Company had ever adjusted its freight rates and passenger fares on traffic originating in Central Pacific territory north of San Francisco, so as to discriminate against transportation eastward over the joint transcontinental route of the Central Pacific and Union Pacific railroads, or that the maintenance by the Southern Pacific Company of the Central Pacific Company's properties, compared with that of the "Sunset route", was ever so inefficient as to discourage eastern travel and transportation via the Ogden route. The contrary was proved by defendants by an overwhelming amount of uncontradicted testimony. We may, therefore, treat as abandoned charges numbered 3, 4 and 5.

Charge No. 6 is nothing more than a general conclusion from the more specific charges by which it is preceded, and is of no assistance or effect in determining precisely what is relied upon as constituting a violation of the Pacific Railroad Acts.

By this process of elimination the Government's case is reduced to charges numbered 1 and 2 above, which will now be subjected to further analysis. In both the violation of the law charged is discrimination, and the discrimination alleged is forwarding over the "Sunset route" some traffic which might move over the Central Pacific-Union Pacific line via Ogden. In the first charge or count the alleged discrimination is against the Central Pacific Railway Company and in respect to traffic moving between the Atlantic and Pacific coast; in the second the alleged discrimination is against "both the Central Pacific and Union Pacific lines" and in respect to traffic originating or ending on the lines of the Central Pacific Railway Company or in territory tributary thereto. In the second charge it is expressly stated that the discrimination is in favor of the "Sunset route"; in the first, it is a necessary inference that the discrimination is in favor of the "Sunset route". Considering the pleadings alone we are unable to determine whether the pleader originally intended to present in charges or counts 1 and 2 independent or materially different kinds of prohibited discrimination. In the light of the evidence it would seem that the Government regards the two charges as amounting to a single charge of discrimination against the "Ogden route" in favor of the "Sunset route" resulting from the preferential solicitation of certain traffic for the latter route.

One of the questions to be decided in this case is whether the provisions of the statute alleged to be

violated by the discrimination charged are applicable to any other cases of discrimination than those resulting from one of the several companies authorized to construct the railroads mentioned in the Pacific Railroad Acts refusing to give to another of such companies advantages and facilities as to rates, time and transportation equal to those it affords any other of such companies or resulting from any discrimination of any kind in favor of the road or business of any of *said companies* or adverse to the road or business of any of "*the others*". In other words, the mandate against discrimination is addressed to the railroad companies forming the group or family of railroads who were authorized to construct the railroads described in the acts. It prescribes a rule of conduct only for members of the group or family, only in respect to their treatment of each other, and only in respect to railroads forming part of the through line to the Missouri River. The provisions prescribing the facilities which members of the family should afford each other and the physical and operating conditions which should be maintained on their respective roads, and enjoining equality of treatment of each other, have no application to outside lines or companies. No outside railroad or company can claim, by force of the provisions in question, from any of the Pacific Railroad Acts companies facilities and advantages equal to those accorded to any of that group or family. By the same token no one of the family can make out a case of discrimination under the statute against another one of the family based on

denial to it of advantages or facilities accorded an outside railroad, nor can any outside railroad be guilty of any discrimination prohibited by the acts.

The question just indicated will be discussed hereafter. It is stated now in order that the Court may see the significance of the fact that the discrimination on which the Government's case is based is not a discrimination by one of the Pacific Railroad Acts companies in refusing to another of such companies advantages or facilities afforded others of the family or in giving to one of the family advantages and facilities denied the others. It is based on a discrimination made by or in favor of the "Sunset route", an outside railroad, which forms no part of the railroads authorized to be constructed by the Pacific Railroad Acts. It would seem that whether the railroads composing the "Sunset route" have discriminated in favor of or against any of the Pacific Railroad Acts companies or whether any of the latter companies have discriminated in favor of the "Sunset route" railroads, is a question to be determined by the provisions of the Interstate Commerce Act, which, as amended, deals very fully with the rights and obligations of connecting railroads, prohibits discrimination in their treatment of each other and provides adequate machinery to enforce its requirements and to establish all proper through routes, under reasonable joint rates and divisions. Hence, it would seem that the discrimination charged is not within the purview of the Pacific Railroad Acts. It is no answer to say that the allegations of the petition may be con-

strued as leveled against the Central Pacific Railway Company and as charging that member of the Pacific Railroad Acts family, under the dominance of the Southern Pacific Company, with discriminating against the Union Pacific Railroad Company, another member of the family. For the discrimination is not based on the Central Pacific Railroad Company treating another member of the family more favorably than it treats the Union Pacific Railroad Company, but it is based on treatment accorded railroads not embraced in the Pacific Railroad Acts. The Pacific Railroad Acts do not require equality of treatment except in the family. Just as facilities and advantages which members may afford each other are not made the measure of the facilities and advantages which must be afforded outside railroads, so what is afforded outside companies by any Pacific Railroad Acts company is not the criterion of what the acts require that company to afford other members of the group.

Returning now from the digression we have made to suggest the point, to be hereafter discussed, namely, that the discriminations charged are not within the purview of the Pacific Railroad Acts, a point not essential to defendants' case, but, if sustained, fatal to the Government's case, let us consider the evidence as it bears upon this branch of the case, in order that, by ascertaining the facts upon which the Government relies as constituting a violation of the requirements of the acts in question, we may see more clearly upon just what construction of the statutes the Government

depends. We shall find that the issue on this branch of the case is reduced to a very narrow compass.

In order that the Court may have in mind what the Pacific Railroad Acts require of the companies named therein, we shall anticipate the more detailed summary of the statutes to follow by stating that they require the roads in contemplation to be constructed of a uniform gauge with prescribed maximum grades and curves, and the several companies authorized to construct the same are required to operate and use said railroads for all purposes of travel and transportation, so far as the public and the Government are concerned, as one continuous line, and in such operation or use to afford and secure to each equal advantages and facilities as to rates, time and transportation, without any discrimination of any kind in favor of the road or business of any or either of said companies, or adverse to the road or business of any or either of the others.

It clearly appears from the evidence that the efforts of the Government were mainly directed to showing (indeed, it may be fairly said they were limited to showing) that the Southern Pacific organization did not strive to persuade shippers to route via the Ogden route every pound of transcontinental traffic which might reach its destination over that route, but that, as to a part of such traffic, the Southern Pacific organization actively solicited shippers to direct the routing thereof over the "Sunset route", meaning the Sunset-Gulf route, the mixed rail and water line from San Francisco to the port of New York. In other words,

when there is traffic to be moved from or to, say, points in Northern or Central California to or from Atlantic Seaboard territory, the Southern Pacific agents go to the shipper or consignee or both and try to secure the routing of the traffic via the Sunset-Gulf route, provided it is traffic which will stand transshipment from car to boat at Galveston, and again from boat to car, if destined elsewhere than to New York City. At the same time the shipper or consignee, whichever controls the route, is solicited by agents of the Union Pacific and its numerous connections (over forty of which maintain agencies for the purpose throughout California and the Pacific Coast generally, as well as in the East) to favor the Ogden route, and at the same time the agents of the Santa Fe and the agents of the Rock Island system and the agents of the Western Pacific and of the Gould system, etc., etc., as well as the agents of the various Panama Canal lines, seek to secure the shipment for their respective lines. When the traffic about to move belongs to the very much larger class of traffic having origin or destination in the vast territory west of a line from Toronto, through Buffalo and Pittsburg, to Bristol, Tennessee, the western boundary of Atlantic Seaboard territory, or when it belongs to the very large class of seaboard territory traffic which will not stand transshipment, the Southern Pacific joins forces with the Union Pacific and its connections in striving to secure the traffic for the Ogden route.

There was no evidence showing that, by reason of the Southern Pacific Company's interest in the "Sunset

route", the effort to secure traffic for the Ogden route was hampered or handicapped in any way by any failure to operate the road west of Ogden in connection with road east thereof as one continuous line or by any withholding of any advantages or facilities in respect to rates, time or transportation or in any other way. Whenever any shipper concluded to prefer the Ogden route and issued his instructions accordingly, it is not claimed (the evidence certainly does not support any claim) that either the shipper or the Union Pacific ever complained or had cause to complain of the through service over the Ogden route either as to its continuity or as to rates, train schedules, maintenance of track or equipment or as to any other matter relating to time or transportation or to anything connected with the use and operation of the line through Ogden as a through line for any purpose of travel or transportation.

The sole ground afforded by the evidence for charging defendants with violating the Pacific Railroad Acts is that, as to certain transcontinental traffic, it is more to the interest of the Southern Pacific Company to move such traffic over the "Sunset route" than the Ogden route, and it accordingly solicits the same preferentially for the "Sunset route".

The record is not only barren of evidence showing disobedience of any of the express requirements of the statutes, but there is abundent competent and uncontradicted evidence affirmatively showing compliance therewith. At all times since the through line was

completed in 1869 a through service via Ogden has been maintained up to the highest standard, the service keeping pace with railroad development and, hence, constantly improving. There are joint through rates and divisions thereof, satisfactory to the Union Pacific, through contracts of carriage (tickets and bills of lading), through billing, through cars and through trains under satisfactory schedules. There have always been the most friendly relations between the representatives of the Southern Pacific and Union Pacific and the closest co-operation to make the Central Pacific-Union Pacific line in its use and operation one continuous through line for all purposes of travel and transportation. The charges of discrimination and unfair treatment of the Union Pacific contained in the Government's petition make queer reading in connection with the testimony showing that the Union Pacific had never complained of its treatment at the hands of the Southern Pacific Company. From 1901 to 1913 the Union Pacific absolutely controlled the Southern Pacific Company, including the line between Ogden and San Francisco. Yet it does not appear that it could add anything to the arrangements existing prior to the merger for the use and operation of the lines west and east of Ogden as one continuous line. The arrangements for through service as they were at the termination of the merger in 1913 continue to exist. In respect to the use and operation of the roads, for all purposes of travel or transportation, as one continuous line, so far as the public and the Government

are concerned, it is clear that neither the Southern Pacific Company nor the Union Pacific Company know how to improve upon the existing arrangements. The same is true in respect to the "advantages and facilities" now being afforded "as to rates, time and transportation". For the rates are mutually satisfactory and the service has not been complained of in any respects. The only attempt of the Government to show that an improvement in the service on the Central Pacific end of the through line might result from a separation of the Central Pacific from the Southern Pacific System met with failure, when Mr. Lovett stated in substance that that part of the through line was so efficiently operated by the Southern Pacific Company that he could not say that it would be better operated if placed in other hands (Vol. I, p. 297).

In considering the general bearing of the Pacific Railroad Acts upon the situation created by the inclusion of the Central Pacific lines in the Southern Pacific System, the following facts and circumstances should be borne in mind:

1. It is not true that the portion west of Ogden of the through line to the Missouri River is composed entirely of the Central Pacific Railroad, and much less is it true that it is composed of the bond-aided line, which is the line authorized and aided by the Pacific Railroad Acts and is the line to which the requirements of the acts apply. Essential parts of the line west of Sacramento belong to the Southern Pacific Railroad

Company. By "essential" we mean necessary to make the through line an efficient and successful competitor for transcontinental traffic. The bond-aided line from Sacramento west, with a five mile break at Brighton, passes through Stockton, Lathrop, Tracy and Niles and ends at San Jose. It does not now afford a practicable line for the transcontinental traffic in question. To meet the standard of efficiency necessary for successful competition, as well as to avoid congestion, the bond-aided line west of Sacramento has been replaced, in the actual operation of trains, by the Sacramento-Elmira-Benicia line (the property of the Southern Pacific Railroad Company), the Sacramento-Tracy-Martinez line (the property of the Southern Pacific Railroad Company from Tracy to San Francisco), and the Sacramento-Tracy-Niles line continuing via the Dunbarton cut-off to Redwood City, from which point it reaches San Francisco over the coast line of the Southern Pacific Railroad Company (Spence, Vol. III, pp. 1017, 1039; Kruttschnitt, Vol. II, pp. 742-3, 751).

2. It is not true that the Southern Pacific Company's ownership of the Central Pacific and of the "Sunset route" gives it control of Atlantic Seaboard territory traffic, with power to route as much of it as it chooses over the "Sunset route". Notwithstanding the Southern Pacific Company's interest and its effort to secure such traffic for the "Sunset route", the proportion of Atlantic Seaboard territory traffic, having origin or destination in territory on the Pacific coast constituting

the field of competition between the two routes, secured by the Ogden route in the year ending June 30, 1914, was over two and a half times the amount secured for the "Sunset route". (See Defendant's Exhibit 80, Vol. VI, p. 2255.) This statement is still true if we deduct from the traffic over the Ogden route all that had origin or destination in Nevada, which is shown by Exhibit 70 (VI Vol. of Defendant's Exhibits, p. 2251) to amount to only 30,372 tons. The deduction of Nevada traffic reduces the territory in the west (covered by Exhibit 80) to points in Northern and Central California, which Mr. Spence's testimony shows to be the Pacific coast territory to which the competition between the two routes is naturally confined. Hence, in the strife between the Ogden route and the "Sunset route" for Atlantic Seaboard territory traffic, the Ogden route is very far from being under the control or at the mercy of the Southern Pacific Company.

3. It is not true that the Central Pacific Railroad, under the control of the Southern Pacific Company, is not holding up its end of the through line or that the through line is handicapped in the strife for traffic by the inclusion of the Central Pacific in the Southern Pacific System. This point has probably been sufficiently covered in the discussion of the case under the Sherman law. We call attention, however, to Mr. Spence's testimony showing that the amount of eastbound traffic delivered to the Union Pacific at Ogden exceeds the amount of westbound traffic received from

the Union Pacific (Spence, III Vol., pp. 1062-3), and to Mr. Lovett's statement that the business of the Ogden route would not be increased by the separation of the Central Pacific from the Southern Pacific System (Lovett, I Vol., pp. 295 and 300).

4. It is not true that the proportion of transcontinental business which it is to the interest of the Southern Pacific Company to move by the "Sunset route" is so large as to characterize the relation of the Southern Pacific Company to the Ogden route as antagonistic. In respect to by far the larger proportion of transcontinental traffic there is no natural competition between the "Sunset route" and the Ogden route. As to all such traffic the Union Pacific is the preferred connection of the Southern Pacific Company. It is sufficient in volume and value to create the strongest motive and inducement in the Southern Pacific Company to maintain the highest possible standard of service on its end of the Ogden route, and to do everything required by the Pacific Railroad Acts. Competition between the Ogden route and the "Sunset route" is naturally confined to traffic between Atlantic Seaboard territory and points in Northern and Central California, and is further restricted by the fact that a large part of this traffic will not stand transshipment and hence will not move over the "Sunset route". Now, it is shown by the testimony of Mr. Spence that *all* the Atlantic Seaboard territory traffic passing over the Ogden route

(including that which will not stand transshipment) is only 16.3 per cent. of the transcontinental traffic moving via that route (Spence, III Vol., p. 1048).

5. It is not true that so much of the traffic in question as is secured for the Sunset-Gulf route represents traffic which has been "diverted", to the prejudice of the public, to a more expensive route with inferior service. Such a contention is contrary to the evidence in this case.

6. Since the Government instituted this suit, and since its testimony was taken and the statistics as to the movement of transcontinental traffic were prepared, the Panama Canal has been opened for business, and the effect, present and prospective, on that part of the Atlantic Seaboard territory traffic for which the Ogden route and the "Sunset route" were competing of the all-water carriers through the Canal has been revealed. The testimony shows that these carriers have not only enormously reduced the takings of this traffic by the lines over which it formerly moved, but that they have reduced the rates to such an extent that the eastern connections of the Central Pacific-Union Pacific line and of the other all-rail lines are not willing to meet them. The result is to put the Ogden route practically out of business in respect to the only traffic upon which the complaint under the Pacific Railroad Acts is based (Spence, Vol. III, pp. 1065-1068). *How can the Cen-*

tral Pacific-Union Pacific through line be discriminated against or prejudiced in any way by the Southern Pacific Company soliciting for the "Sunset route" traffic for which the Ogden route, through no fault of the Southern Pacific Company, is practically out of the market? How can the public be benefited or any useful purpose be subserved by impairing the efficiency (through separation therefrom of its Central Pacific elements) of practically the only through line which remains to compete with the all-water carriers? (See *supra*, pp. 21-22, 111-112.)

II. Provisions of the Pacific Railroad Acts imposing obligations upon the railroad companies subject thereto in respect to operation and use of their roads.

The title of the act of July 1, 1862, declares its object to be to aid in the construction of "a railroad and telegraph line from the Missouri River to the Pacific Ocean", and to secure to the Government the use of the same for postal, military and other purposes. Section 18 further defines the object to be accomplished, namely, "to promote the public interest and welfare by the construction of said railroad and telegraph line, and keeping the same in working order, and to secure to the Government at all times (but particularly in time of war) the use and benefits of the same for postal, military and other purposes".

The enterprise to receive Government aid is sometimes referred to, as in the title and in section 18, in the singular as a railroad from the Missouri River to the Pacific Ocean, and sometimes in the plural, as in Section 15 hereafter quoted, as the railroads authorized to be constructed. What the acts really contemplated was, not one straight single railroad, but a number of railroads constructed by numerous independent companies, the whole to result in railroad connection between the river and the ocean. It was probably expected at the time that the western part would be a single or trunk line and the eastern part composed of a number of forks. In other words, it was possible, if not actually expected,

under the terms of the acts, that the result of the railroad construction would be a number of lines of the shape of a fan, the handle toward the west and the fan part proper composed of numerous lines radiating therefrom, each in connection with some other of the lines forming a through line from the Pacific Ocean to the Missouri River. One of the problems which Congress had before it was to prevent family quarrels between these various railroads, and to secure arrangements between the component parts of the various possible through lines necessary to cause them to be operated as through lines, and especially to prevent the main stem or handle of the fan from discriminating in favor of or against any of the contemplated radiating lines. Discrimination in respect to rates, time or transportation might result in preventing one of the lines from securing any traffic and this would operate unfairly against the territory served by it. For instance, a discrimination in favor of the line to Omaha or against the line to Kansas City would be likely to give just cause for complaint to the merchants of Kansas City and of the country farther east dependent upon the line through Kansas City.

Congress solved this problem, not by requiring single ownership, control or management, or a partnership of interests, but by the provisions of the acts upon which the present suit is based, section 12 of the act of July 1, 1862, as amended by section 15 of the act of July 2, 1864, with the additions thereto made by the act of June 22, 1874.

Section 12 of act of 1862 (12 Stat., 489) is as follows:

"And be it further enacted, That whenever the route of said railroad shall cross the boundary of any State or Territory, or said meridian of longitude, the two companies meeting or uniting there shall agree upon its location at that point, with reference to the most direct and practicable through route, and in case of difference between them as to said location the President of the United States shall determine the said location; the companies named in each State and Territory to locate the road across the same between the points so agreed upon, except as herein provided. The track upon the entire line of railroad and branches shall be of uniform width, to be determined by the President of the United States, so that, when completed, cars can be run from the Missouri River to the Pacific coast; the grades and curves shall not exceed the maximum grades and curves of the Baltimore and Ohio Railroad; the whole line of said railroad and branches and telegraph shall be operated and used for all purposes of communication, travel, and transportation, so far as the public and government are concerned, as one connected, continuous line; and the companies herein named in Missouri, Kansas, and California, filing their assent to the provisions of this act, shall receive and transport all iron rails, chairs, spikes, ties, timber and all materials required for constructing and furnishing said first-mentioned line between the aforesaid point, on the one hundredth meridian of longitude and western boundary of Nevada Territory, whenever the same is required by said first-named com-

pany, at cost, over that portion of the roads of said companies constructed under the provisions of this act."

Section 15 of the act of 1864 (13 Stat. 356) provides:

"And be it further enacted, That the several companies authorized to construct the aforesaid roads are hereby required to operate and use said roads and telegraph for all purposes of communication, travel and transportation, so far as the public and the government are concerned, as one continuous line, and in such operation and use to afford and secure to each equal advantages and facilities as to rates, time and transportation, without any discrimination of any kind in favor of the road or business of any or either of said companies, or adverse to the road or business of any or either of the other, and it shall not be lawful for the proprietors of any line of telegraph authorized by this act, or the act amended by this act, to refuse or fail to convey for all persons requiring the transmission of news and messages of like character, on pain of forfeiting to the person injured for each offence, the sum of one hundred dollars, and such other damages as he may have suffered, on account of said refusal or failure, to be sued for and recovered in any court of the United States, or of any State or Territory of competent jurisdiction."

The act of June 22, 1874 (18 Stat. 111) adds to Section 15 of the act of 1864 as follows:

"And any officer or agent of the companies authorized to construct the aforesaid roads, or of any company engaged in operating either of said

roads, who shall refuse to operate and use the road or telegraph under his control, or which he is engaged in operating for all purposes of communication, travel, and transportation, so far as the public and the government are concerned, as one continuous line, or shall refuse, in such operation and use, to afford and secure to each of said roads equal advantages and facilities as to rates, time, or transportation, without any discrimination of any kind in favor of, or adverse to, the road or business of any or either of said companies, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined in any sum not exceeding one thousand dollars, and may be imprisoned not less than six months. In case of failure or refusal of the Union Pacific Railroad Company, or either of said branches, to comply with the requirements of this act and the acts to which this act it amendatory, the party injured or the company aggrieved may bring an action in the district or circuit court of the United States in the territory, district, or circuit in which any portion of the road of the defendant may be situated, for damages on account of such failure or refusal; and, upon recovery, the plaintiff shall be entitled to judgment for treble the amount of all excess of freight and fares collected by the defendant, and for treble the amount of damages sustained by the plaintiff by such failure or refusal; and for each and every violation of or failure to comply with the requirements of this act, a new cause of action shall arise; and in case of suit in any such territory, district, or circuit, process may be served upon any agent of the defendant found in the territory, district or circuit in which such suit may be

brought, and such service shall be by the court held to be good and sufficient; and it is hereby provided that for all the purposes of said act, and of the acts amendatory thereof, the railway of the Denver Pacific Railway and Telegraph Company shall be deemed and taken to be a part and extension of the road of the Kansas Pacific Railroad, to the point of junction thereof with the road of the Union Pacific Railroad Company at Cheyennne, as provided in the act of March third, eighteen hundred and sixty-nine."

The act of June 22, 1874, does not add to the requirements of section 12 of the act of 1862 or section 15 of the act of 1864. It simply provides penalties for disobediences of the earlier acts. But it confirms what we have said in respect to the purpose and scope of the provisions requiring the different railroads participating in the construction of the through line to form through lines and accord to each other equal and non-discriminatory facilities and advantages in respect to rates, etc. It was evidently aimed at the Union Pacific, and was provoked by its failure to accord to the through line via Cheyenne and Denver and thence over the then Kansas Pacific Railroad Company to Kansas City the same through rates, etc., which prevailed over its road to Omaha, the latter part of which is designated in the Pacific Railroad Acts as the Iowa Branch. All of these roads belonged to the Pacific Railroad Acts family of roads, and the object which the provisions of sections 12 and 15 were intended to accomplish had been frustrated by the failure of the Union Pacific to make through arrangements with the Kansas City

branch. Subsequently the Union Pacific acquired the Kansas Pacific.

The objectionable conduct which gave rise to the legislation of 1874 may be inferred from its terms. It is made clear also in the debates in the Senate which preceded its passage. The Union Pacific had practically closed the through line via the Kansas Pacific. (Congressional Record, 43rd Congress, First Session, pp. 5021 to 5026.) If the testimony before the Pacific Railroad Commission, annexed to its report of 1887, can be regarded as before the Court for any purpose, there will be found on page 132 of the report the statement of Mr. Adams, chairman of the Union Pacific's Directors, that the act of 1874 was the result of efforts of the Kansas Pacific to enforce its rights on the subject of through passenger and freight rates.

Section 16 of the act of 1862 and the same numbered section of the act of 1864 gave any two or more of the companies named in the acts the right to consolidate. But consolidation was authorized, not required. The acts permitted and contemplated, not only construction of the railroads, but the subsequent ownership and operation thereof, by many independent corporations of different States. This involved separate control and management and diverse interests, the only restriction being the construction of the various roads so as to form, by connections at various junction points, a through line or through lines of uniform gauge, and the subsequent use and operation thereof as continuous lines according to each other equal and non-discrimina-

tory facilities in respect to rates, time and transportation. Physical and transportation continuity was required; but, provided these requirements are met, the railroad companies in question are free to form such other connections or affiliations as they may see fit to form. They are not tied to each other in any other way than is involved in the formation, physically and by appropriate equal traffic arrangements, of the contemplated through line or lines. They may operate through other gateways, by direct extension or by connections. They may become more interested in other through lines. They run counter to the Pacific Railroad Acts only when they break up the through lines therein provided for, by a physical break in connection, by refusing to give the necessary through service or to make the necessary through rates, etc., or by discriminating in rates, time or transportation in favor of one of the through lines so as to put the others out of business or by discriminating against one or more of the through lines so as to close them. Preferential solicitation through some other junction or gateway than the one where connection is made with a Pacific Railroad Acts company is not a violation of the statutes, since such conduct does not break the continuity of the through line or lines described in the acts, and does not interfere with the existence over such lines of equal and nondiscriminatory rates, time schedules and every other element of through service. The Ogden route has flourished, notwithstanding the preferential solicitation complained of.

III. The provisions of the Pacific Railroad Acts requiring the railroad companies authorized to construct the through line or lines from the Pacific to the Missouri River to accord each other equal and non-discriminatory facilities and advantages in respect to rates, time and transportation will not support a charge of discrimination against said through line in favor of an outside line.

The charge we have to meet is that the Southern Pacific Company, as operator of the Central Pacific, discriminates against the Union Pacific, or that, as operator of the "Sunset route", it discriminates against the Central Pacific-Union Pacific line, the discrimination being *in favor of the "Sunset route"* and consisting of the preferential solicitation of some traffic for the "Sunset route."

Pretermitting for the present the question whether a case of discrimination otherwise within the meaning of the Pacific Railroad Acts has been made out, we now suggest for consideration by the Court the preliminary question, whether discrimination by or in favor of a railroad line or a railroad company not included among the railroads or railroad companies mentioned in the Pacific Railroad Acts is covered by the provisions of the acts prescribing the rule of equality in respect to rates and service accorded. A decision of this question in defendants' favor is not essential to their case, but is fatal to the case of the Government.

We submit that it is clear from the language of the

law that the requirements in question must be considered as a family rule to secure impartial treatment of each other by different members of the group of railroads authorized to connect the Pacific Coast with the Missouri River. The equal advantages and facilities required by section 15 are commanded to be afforded only by "the several companies authorized to construct the aforesaid roads" and only to some one or more of such companies. The equality required to exist is equality between the different members of this same group of railroads. The statute does not concern itself with the advantages and facilities which may be afforded to some outside railroad. It does not make the character of the advantages and facilities afforded an outside railroad a standard of comparison for determining what shall be afforded to the companies included in the statute or a test for determining the existence of the equality required. We can no more read into the statute that each one of the Pacific Railroad Acts companies must furnish to the others advantages and facilities equal to those afforded any outside railroad, than we can read into it a requirement, for the benefit of outside railroads, that they shall be afforded by any member of said group advantages and facilities equal to those which it affords to any other member of the group.

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and extensions between the Pacific coast and the Missouri river. The prohibition is not violated by discrimination in favor of an outside railroad against a member of the family any more than it is violated by discrimination against an outside railroad in favor of one of the family. We repeat the provisions of section 15 in respect to discrimination constitute a family law to prevent partiality as between members of the family.

The Attorney-General was doubtless misled as to the purpose and scope of the provisions in the Pacific Railroad Acts regulating the operation and use of the railroad authorized to be constructed by regarding those provisions as exclusively or mainly concerning the relations between the Central Pacific Railway and the Union Pacific Railroad. As the Union Pacific was the only connection of the Central Pacific at Ogden there was little room for violation of the provisions, especially in regard to discrimination, unless a much broader meaning was given to the words of the statute than their literal or usual significance would justify. Hence the temptation to unduly extend the scope of the requirements. But abundant *raison d'être* for the provisions appears, and abundant scope for their operation will be seen to exist, when we consider that the requirements apply, not only to the Union Pacific and the Central Pacific, but to the numerous other companies and through lines to be formed by their connections with each other and with the Union Pacific Railroad. These provisions must be construed to be applicable to any system of railroads which might have come into exist-

ence under the authority of the acts; that is, if the roads authorized had been constructed and had made connections with the Union Pacific Railroad at any of the places contemplated by the acts.

For instance, there was the Leavenworth, Pawnee & Western Railroad Company (Kansas Pacific) authorized to construct a railroad from Kansas City to connect with the Union Pacific Railroad either at a point on the 100th meridian or east or west of the 100th meridian (sections 9 and 10 of the act of 1862) and even, under certain contingencies, to meet and connect with the Central Pacific Railroad (section 12 of the act of 1864). And there was the line authorized to be constructed by the Hannibal and St. Joseph Railroad Company to connect with the Kansas Company's line or with the line from Omaha (the Iowa branch) or with the main line at the point on the 100th meridian (section 13 of the act of 1862). And there was the line to be formed by the connection between the Kansas Company and the Pacific Railroad Company of Missouri (sections 9 and 10 of the act of 1862). And there was the Sioux City branch to be constructed from Sioux City to a connection with the Iowa branch or with the main line at the 100th meridian (section 14 of the act of 1862). This road was first required to be built by the Union Pacific Railroad Company, but another company was afterward authorized to construct it (section 17 of the act of 1864). There was also the line which the Burlington & Missouri River Railroad Company was authorized to build from the Missouri

River south of the Platte River to connect with the Union Pacific Railroad not farther west than the 100th meridian (section 18 of the act of 1864). Finally, there were the connections with the Iowa branch and the Kansas City branch formed by the railroad of the Denver Pacific Railway and Telegraph Company between Denver and Cheyenne, which probably occasioned the passage of the act of June 22, 1874 (act of March 3, 1869, section 2, and act of June 22, 1874). Moreover, there was the general permission in section 15 of the act of 1862, authorizing any railroad, then or thereafter incorporated, to connect its road with the road and branches provided for by the act. And, again, as the act contemplated that different companies might construct the railroad in the different States and territories, many other connections might result (section 12 of the act of 1862).

It appears from the foregoing that the acts contemplated several branches east of the 100th meridian, and many, if not all, of these branches might connect at the point on that meridian. The Union Pacific Railroad was accordingly required not to discriminate for or against any of these connections. The necessity for such requirements is shown by the explanation, *supra*, of the passage of the act of June 22, 1874.

The construction for which we are contending does not tend to weaken the provisions looking to the formation of a through line or through lines which shall be continuous, physically and in their operation, for all purposes of travel and transportation, so far as the

public and the Government are concerned. The requirements in respect to through lines and through service are absolute. The requirements of equal and non-discriminatory advantages and facilities in respect to rates, time and transportation are from their nature relative. The railroad companies mentioned in the act are under the absolute obligation to accord each other such advantages and facilities as are necessary to the maintenance of uninterrupted through service, and, in complying with this obligation, they are under the further obligation of not discriminating against each other. The relations of the numerous Pacific Railroad Acts companies with other railroad companies are governed by general laws.

IV. The mere fact that the Southern Pacific Company, to the extent and in the manner shown by the evidence, preferentially solicits for its "Sunset route" some traffic which might otherwise pass over the Central Pacific-Union Pacific line does not constitute a violation of the Pacific Railroad Acts.

That the preferential solicitation in favor of the "Sunset route" is not inconsistent with the existence of a through route via Ogden operated as one continuous line is too clear for argument. Such preferential solicitation has been going on since 1883; it has not interfered with the Ogden route becoming in the meantime the strongest and most efficient through all-rail line between the Pacific Coast and the Missouri River and beyond. *Res ipsa loquitur.* The position of the Government seems to be that such solicitation amounts to a prohibited discrimination, and to this claim we shall now direct the argument.

The contention involves an extension of the obligations of the Pacific Railroad Acts far beyond the making of proper and usual arrangements between the group of railroads included in the acts for uninterrupted service under nondiscriminatory joint rates, with divisions mutually satisfactory. To support the Government's case Section 15 must be construed as imposing the further requirement upon each one of the Railroad Companies authorized to construct any part of the railroad and its branches from the Pacific Coast to the Missouri River, not only to afford such facilities

and advantages, without discrimination as to rates, time or transportation, to any other of such companies, but, after having done so, to abstain from soliciting the movement of any freight over any other route, or from having any interest or affiliations with any other lines which would give it an interest in the routing of any traffic adverse to the through line constructed under the Pacific Railroad Acts. Such a construction would practically limit each of such companies as a part of a joint transcontinental line to a connection with some other of the group of railroads mentioned in the acts. It would tie the Central Pacific to the Union Pacific and compel it to deliver to that connection all the traffic which it could secure and which could be further transported by that line; and, by parity of reason, it would tie the Union Pacific in like manner and to like extent to the Central Pacific—a tie or obligation inconsistent with the Union Pacific's ownership of the lines from Ogden to Portland and from Ogden or Salt Lake City to Los Angeles.

This contention involves, moreover, an extension of the obligations imposed by the Pacific Railroad Acts unwarranted by the plain meaning of the language employed. Neither the obligation to operate and use the roads for all purposes of transportation, so far as the use thereof by the public and the United States is concerned, as one connecting continuous line, nor the additional obligation to accord to each other in such operation and use equal and non-discriminatory advantages and facilities in rates, time and transportation,

include or involve the additional obligation, in cases where any of the public is indifferent as to the routing of certain traffic, to forward such traffic by the route formed by its connection with one of the Pacific Railroad Acts companies instead of by some other route. Nor is there anything in the obligations imposed which expressly or impliedly prohibits any railroad company subject thereto from soliciting the privilege of selecting the route over which traffic offered shall move or from exercising the privilege thus obtained in favor of any route it may select. So long as the public and the United States have open to them through service under through rates, with all the other usual arrangements for uninterrupted interchange of traffic, over the Central Pacific-Union Pacific line, such line is being operated and used, so far as they are concerned, as one continuous, connected line. So long as the Union Pacific Railroad Company is afforded satisfactory or reasonable arrangements as to service, rates and divisions for interchange of traffic, and so long as those arrangements are equal to those afforded to any other of the companies or railroads covered by the Pacific Railroad Acts, the Union Pacific cannot complain of discriminatory treatment in respect to "advantages and facilities" in the matter of "rates, time or transportation" accorded it by the Central Pacific Railway Company. And it has never complained. It may be said of the existing arrangements that they go beyond the requirements of the acts, in that they are not only as favorable as those accorded any of the Pacific Railroad Acts family of roads, but as favor-

able as those accorded any other connection at the junction point of the two roads *and as favorable as those made with any line of railroad at any point.* That they are sufficient to admit of the successful operation of the two lines as a through route from the Pacific to the Missouri River and beyond is conclusively shown by the amount of competitive traffic moving over that route, whether this amount be considered absolutely or in comparison with similar traffic passing over competitive routes.

Let us scrutinize closely the language of the statutes in order to arrive at the exact meaning of the "advantages and facilities" which must be afforded. Neither the adjective "equal" nor the complementary provision as to discrimination serve to define the terms "advantages and facilities". Their effect is to require that the "advantages and facilities", such as are required, shall be impartially afforded. But there are other expressions which qualify and define the words whose scope we are seeking to determine. And we shall now examine those defining or qualifying expressions to see whether they include the idea of solicitation or preferential routing. That is to say, whether they require or justify the Court in holding that a violation of the law results from simply exercising the option, secured by solicitation or by indifference of shippers, of routing traffic by forwarding the same or a part of it by some other gateway or connection than that formed by connection with some other of the railroads covered by the acts. The Government in this case demands even more

It claims that the statute forbids any railroad company subject thereto from even having any connection or affiliation with any other carrier which would give it an interest in the movement over the line of such carrier of any traffic which might otherwise pass over the line formed by it and one of the group of railroads mentioned in the Pacific Railroad Acts. Immediately qualifying the words "advantages and facilities" is the expression "as to rates, time and transportation". Neither "rates" nor "time" nor "transportation" involve the idea of soliciting traffic. Equal advantages or facilities in respect to *"rates"* means simply that the through rates shall be the same by the different connections, and the divisions thereof arranged on the same basis. Equal advantages or facilities as to *"time"* refer simply to time schedules for through movement of cars or freight. Equal facilities and advantages as to *"transportation"* relate simply to the physical movement of traffic including equipment, switching arrangements, etc.

The words "without any discrimination of any kind in favor of the road or business of any or either of said companies, or adverse to the road or business of any or either of the others" constitute an adjective clause which relates back to the nouns "advantages and facilities" which are themselves qualified or limited by the words "as to rates, time and transportation". They are the negative complement of the adjective "equal". The law-makers might, with the same effect, have said—equal and *non-discriminatory* advantages and facilities—if they had not wished to emphasize the prohibi-

tion and at the same time confine it to the companies authorized to construct the railroads in question. The words "without discrimination of any kind", etc., do not constitute an independent sentence but a dependent qualifying clause which must be construed with what precedes. So construed the discrimination prohibited is a discrimination in respect to "advantages and facilities as to rates, time and transportation". They do not enlarge or add to the character of the facilities or advantages which are to be non-discriminatory. These are determined by the words "as to rates, time and transportation", and by what is necessary or usually incident to the operation of a continuous through line. They simply forbid discrimination in the matter of such advantages and facilities. The use of the word "business" does not enlarge the scope of the law so as to include the entire corporate business or interests. "Business" manifestly means the business or traffic tendered by one line to another for through transportation. It was not intended to impose upon the railroad companies included in the acts an alliance covering all their corporate interests and business, an alliance which would be violated when any of such companies formed connections or affiliations which gave rise to interest or policies opposed in any way to the interests or policies of other members of the through lines. The requirement that advantages or facilities as to rates, time and transportation shall be without discrimination, etc., we repeat, does not affect the nature or extent of the

advantages or facilities. They are still limited to the matter of rates, time and transportation.

The other qualifying expression, "so far as the public and the government are concerned", certainly does not indicate any intention to protect interests peculiar to the railroad companies. The Government is here regarded as a user of the railroad, not as a creditor. Its interests as a creditor were taken care of by other provisions, and it no longer has any interest as a creditor. If the railroads are so operated and used that the Government or any of the public are afforded the opportunity to ship goods over the through line under a through bill of lading upon joint rates in through trains, the rates, etc., being equal to those afforded by any other line, the Government and public are not concerned, and certainly not prejudiced, by having another alternative route open to them and by being solicited at times to make use of such alternative route.

We submit that we have shown that section 15 does not expressly prohibit the Central Pacific or the Union Pacific or any other of the several railroad companies referred to from owning or having affiliations with other lines which would create an interest in the movement over such other lines of traffic that might otherwise pass over the through line which was to be constructed under the acts of 1862 or 1864, or from routing or soliciting the routing of any such traffic over such other lines. It remains to consider whether a prohibition against such affiliation or preferential routing is a necessary or proper implication from what is

expressly required or prohibited. This depends upon whether having an interest in an alternative route, or preferential routing of some traffic by another line or gateway, is inconsistent with the requirement that the line constructed under the statute shall be operated and used, so far as the Government and the public are concerned, as one continuous line, etc.

In providing how the many forked line or lines between the Missouri River and the Pacific Coast should be operated and used Congress contented itself with requiring (1) operation and use for all purposes of communication, travel and transportation, so far as the public and Government are concerned, as one continuous line, and (2) impartiality and equality of treatment of each other by each of the roads forming part of the lines in respect to advantages and facilities extended to each other as to rates, time and transportation. There was no attempt to enumerate or define the advantages and facilities to be afforded. Obviously and necessarily they are such, and such only, as are usual and necessary for the operation and use of the railroads concerned, so far as the public and the Government are concerned, as one continuous line for all purposes of communication, travel and transportation. In other words, neither the requirements of the law nor its implications go beyond what is necessary or usually incident to the formation and operation of a continuous through line. We believe we can safely leave to counsel for the Government the impossible task of showing that, among the necessary and usual inci-

dents of the formation and operation of a continuous through line, is the condition that neither of the connecting railroads can have any interest in another line or gateway or solicit the movement of freight by any other route, but must work exclusively for each other and must make what has been referred to in the testimony as a 100 per cent. interchange at the junction point. (See testimony of Mr. Schumacher, Vol. I, pp. 172-3.)

We shall endeavor to show hereafter that the contention of the Government in this case in respect to the Pacific Railroad Acts is inconsistent with its position and the decision of the Supreme Court in the Union Pacific Merger case. We shall say in this connection, however, that the declaration or intimation of the Court in that case that the statute did not require only physical connection or physical continuity but might be construed as requiring such facilities as joint rates and other usual arrangements for through transportation, is not in conflict but in harmony with the argument we have advanced. There is certainly nothing in the language of the Court to support the contention that the law required facilities or advantages or anything else beyond what would be necessary or usually incident to the formation and operation of a continuous through line. The operation of the Central Pacific by the Southern Pacific Company as well as its operation of the "Sunset route", and all the essential facts now relied on to show the existence of conditions inconsistent with the requirements of the Pacific Railroad

Acts, were then before the Court. There was also before it the affiliation of the Union Pacific with the two lines reaching the Pacific coast at Portland and at Los Angeles. If either the then Attorney-General or this Court had considered the Pacific Railroad Acts to mean what the present Counsel for the Government are claiming, neither would have failed, in such an appropriate case as was then up for decision, to make known their views. The construction of the statute now contended for would have suggested and led to a decree which would have accorded to the Government in the former suit all the relief it seeks in this suit under the Pacific Railroad Acts.

The construction of the statute upon which the Government's case essentially depends is such an obvious attempt to enlarge the provisions beyond the plain meaning of the language used that further argument is hardly necessary. But a consideration of the subject matter of the Pacific Railroad Acts and of the consequences which would result from the adoption of the construction we are combatting will still further discredit the Government's contention.

Additional light will be thrown upon the requirements in question when we remember that in 1862 and 1864 there was no law requiring physical connection between railroads which met each other or requiring connecting railroads to make any arrangements for through service or through rates. The provisions in the Pacific Railroad Acts anticipated requirements of like character now common in the railroad laws of the

different States and now applicable to railroad companies generally through the requirements contained in the *amended* Interstate Commerce Act and the powers given to the Interstate Commerce Commission. We pointed out above that to construe the provisions in question as applicable solely or mainly to the connection at Ogden between the Union Pacific and the Central Pacific might mislead one into reading into the statute more than the language used would justify, and that a corrective to this misleading tendency would be afforded by considering the many other connections to which the provisions were applicable and for which they were mainly intended. So now we suggest that to construe the acts with reference to the present state of the law in regard to connecting railroads will mislead one into stretching the scope of the provisions, and that a proper corrective is to consider the provisions in question with reference to the state of the law when the Pacific Railroad Acts were adopted. If it be true that, in the course of the development of the law and of improvements in through rail transportation, connecting railroads now, voluntarily or by compulsion of law, co-operate as closely in giving through service as the companies named in the Pacific Railroad Acts were required to do, this circumstance would afford no reason for now extending those requirements beyond the scope which would otherwise be given to the language employed.

If the members of Congress who drafted and who voted for those acts could have foreseen how through

freight and passengers are carried over the through route formed by the Union Pacific-Central Pacific lines and the mutually satisfactory arrangements for the handling of through business under which the two roads have been for so long operated as one continuous connecting line, can it be doubted that they would have been perfectly satisfied with such compliance with their mandates and equally satisfied with the results?

We challenge the Government to produce any precedent or authority for the contention that the requirement imposed upon the railroad companies mentioned in the Pacific Railroad Acts to afford to each other equal advantages and facilities as to rates, time and transportation, without any discrimination for or against any other of such companies, means that, after making reasonable, equal and non-discriminatory arrangements for through routes, joint rates, etc., none of such companies may preferentially route any traffic by any other connection (even at some other gateway) than the one it may make with one of the other Pacific Railroad Acts companies, not even in case of its own line. Certainly no such precedent or authority is found in the construction placed upon the provisions of the Interstate Commerce Act, as those provisions have been amended from time to time with the same general purpose which Congress had in view in framing section 12 of the act of 1862 and section 15 of the act of 1864. Considering the amendments in 1906 and 1910 to section 15 of the Interstate Commerce Act, giving the Commisssion full power to establish through rates;

the Carmack Amendment in 1906 to section 20, requiring the issuance of through bills of lading; the power conferred upon the Commission by amendment in 1906 to prescribe the terms and conditions upon which through routes shall be operated; the amendment of 1910 making it the duty of all interstate railroads "to establish through routes and just and reasonable rates applicable thereto; and to provide reasonable facilities for operating such through routes, and to make reasonable rules and regulations with respect to the exchange, interchange and return of cars used thereon, and for the operation of such through routes, and for providing for reasonable compensation to those entitled thereto"; and the provisions of section 13 for complaint to the Commission for anything done or omitted to be done in contravention of the act, and section 15, empowering the Commission to make appropriate orders upon the hearing of such complaint—in connection with sections 3 and 7 of the act forbidding discrimination between connecting lines—it cannot be doubted that under the Interstate Commerce Act, either by its direct requirements or through order of the Commission, connecting railroads may be required to do as much as is required by the Pacific Railroad Acts of the companies therein mentioned. Yet it has never been intimated in any decision of any court or in any complaint before the Commission that we have been able to find that, if a railroad connects with two other railroads, both reaching by their connections the same territory, one through Gateway A and the other through

Gateway B, that the railroad having these two connections may not preferentially forward traffic by the road reaching Gateway A or solicit the privilege of forwarding traffic that way. It has never been charged that such conduct would amount to a discrimination as to rates, time or transportation against the road leading to Gateway B or a denial to it of equal advantages or facilities in respect to rates, time or transportation.

Since the institution of this suit the Transportation Act, 1920, has been enacted. This Act confers upon the Interstate Commerce Commission practically unlimited powers over all that concerns connecting lines of railroad and the operation thereof as continuous lines, &c., including the matter of through routes, joint rates, reasonable divisions thereof, car service, use of terminals, &c. Had the Interstate Commerce Act as amended by the Transportation Act, 1920, been in existence in 1862 and 1864, the provisions in the Pacific Railroad Acts to secure the operation of the connecting lines of the Central Pacific and of the Union Pacific as one continuous line, so far as the public and the Government are concerned, without discrimination as to rates, time and transportation, &c., would have been unnecessary. It is within the power of the Interstate Commerce Commission to secure for the Union Pacific all that it is entitled to under section 12 of the act of 1862 or section 15 of the act of 1864, and more. There is no necessity or reason for the United States, even if it has the right, which we deny, to invoke the provisions of the Pacific Railroad Acts on behalf of the

Union Pacific, and to insist upon the disruption of the Southern Pacific System, a Draconian remedy, to insure the operation of a through line via the Ogden gateway. Neither the Union Pacific nor any of the public have ever complained of the manner in which the Southern Pacific Company has fulfilled its obligations in the premises. And the rights and interests of both in the future are amply protected by the present plenary powers of the Interstate Commerce Commission.

It is a fair test of the correctness of the Government's construction of the requirements in question to apply it to conditions which were contemplated or authorized by the terms of the Pacific Railroad Acts. As we have seen, it was contemplated that there would be several branches, probably radiating from a point on the 100th meridian. One of these branches, the one to Omaha, referred to as the "Iowa Branch", was to be constructed by the Union Pacific. Another, the one to Kansas City, was to be constructed by the Pawnee, Leavenworth and Western Railroad Company (afterwards the Kansas City). And there were several others. After such construction the Union Pacific would own a continuous line from point of connection with the Central Pacific to Omaha. If we should impose upon the Union Pacific, in respect to the extension of its own line and to the other branch roads, at the contemplated meeting point on the 100th meridian, the obligation, not only to make fair and equal arrangements for interchange of traffic, but not to solicit eastbound traffic via Omaha or to prefer its own line in

the forwarding of such traffic, we would be construing the act consistently with the Government's contention as to the obligation of the Central Pacific to the Union Pacific; but would we not have a *reductio ad absurdum* of that contention?

Suppose the Union Pacific should complete its through line to the Coast by the purchase of the Western Pacific. Would it have to observe a position of impartial neutrality as between its own line west of Ogden and the line of the Central Pacific? Would the mere preferential routing of traffic over this part of its own line constitute a violation of the Pacific Railroad Acts? Is this Court prepared to declare unlawful any voluntary routing of traffic by the Union Pacific over the Western Pacific? Is it willing to render a decision which would prevent the Union Pacific from acquiring the Western Pacific?

In determining whether the requirements of those acts have been violated the case stands just as it would stand if the Southern Pacific Company and the Sherman Law were out of the case and the stock of the Central Pacific Railway Company were owned by the same persons who owned the stock of the other railroad companies composing the Southern Pacific System, or as it would stand if the Central Pacific Railway Company had in its own name constructed and owned or was operating the "Sunset route." The case is not altered in any sense by the introduction of the Southern Pacific Company. The terms of section 15 of the Pacific Railroad Acts do not acquire a different mean-

ing or a wider scope or application from the fact of the common ownership by one company of the stock of the Central Pacific Railway Company and of the stock of the companies owning the "Sunset route". The meaning of the words "equal advantages and facilities" or non-discrimination in respect to rates, time or transportation remains the same.

Now, suppose the Central Pacific Company, after the construction of its road to Ogden, had built a road along the route now occupied by the lines composing the "Sunset route," would it have been a violation of the Pacific Railroad Acts for the Central Pacific, after according to the Union Pacific Railroad the arrangements for through service, rates, etc., it now accords, to have favored, in the way the Southern Pacific now does, its own road via Yuma, El Paso, Galveston, etc.? Or again, is there anything in the Pacific Railroad Acts which would have prevented the Central Pacific, after connecting with the Union Pacific, from building a line of its own eastward to or towards the Missouri River, or which would have prevented the Union Pacific Railroad Company after such connection from extending its line to the Pacific coast. Would it be a violation of those acts now for either company to construct or acquire railroads competitive with the lines of the other? If the Central Pacific, after connecting with the Union Pacific at Ogden, had extended its line eastward, say to Denver, would the Pacific Railroad Acts require it to observe an attitude of strict neutrality in respect to solicitation of traffic as between its own line and the

line of the Union Pacific Railroad? An affirmative answer to these questions would condemn the acquisition by the Union Pacific Railroad Company of its line from Ogden to Portland and its line from Salt Lake City to Los Angeles. This Court in the Unmerger Case found nothing objectionable in the ownership and operation by the Union Pacific of either of these lines, both of which compete with the Central Pacific Railway Company, and the Court expressly approved the control of the line to Los Angeles. It is absurdly inconsistent for the United States under these circumstances to proceed to enforce, on behalf of the Union Pacific Railroad Company, a line of conduct for the Central Pacific so utterly at variance with the conduct of the Union Pacific towards the Central Pacific.

The petition in this suit justifies the belief that the construction of the Pacific Railroad Acts now asserted is of such recent origin that the effect of its general application has not been considered. A part of the Central Pacific Railway Company is a railroad from Roseville to the Oregon boundary line, a land grant railroad, formerly the California and Oregon Railroad Company, constructed under the act of Congress of July 25, 1866 (14 Stat. 239). One of the railroads operated by the Southern Pacific Company is a continuation of this line to Portland, also constructed under the California and Oregon Grant of July 25, 1866, by the Oregon and California Railroad Company. Section 7 of that act imposes upon these two railroads the same obligations as did the acts of 1862 and 1864 upon the

railroads mentioned therein, requiring that the owners thereof operate and use them so far as the public and the Government are concerned as one connected and continuous line, with equal advantages and facilities, without discrimination, etc. How utterly inconsistent with the Government's construction of the obligations resulting from such provisions upon the Central Pacific with reference to the Union Pacific is the contention that the two lines constructed under the California and Oregon Grant could or would have been extended to parallel and compete with each other, had they not fallen under common control, and that the resulting operation of the two lines as one continuous, connecting line is contrary to public policy and a restraint of trade.

Equally inconsistent is the charge now made of discrimination against the Union Pacific with the contention which characterized, as we shall see, the Government's argument in the Union Pacific Unmerger Suit, namely, that the Union Pacific had always received fair treatment and had no cause to complain of the arrangements under which the two lines had been operated as a through route.

To construe the acts as they must be construed to support the Government's contention would tend to discourage all of the several railroad companies mentioned in the act from extending or constructing their lines of railway, since they would not be free to work for their own lines or to make advantageous arrangements in reference to interchange of traffic or divisions of rates with other systems of railroads. The

obligation never to be interested in the routing of freight in any other way than by the line of railroad authorized to be constructed by the Pacific Railroad Acts and never to solicit the privilege of forwarding freight by any other route, would forever hamper and discourage the development of these companies. We submit that such a construction is not justified by the plain significance of the terms of the statutes, nor by their general purpose, nor by the particular reasons for the requirements in question, nor by the construction which has been given to similar provisions now applicable as a general rule to all connecting lines of railway.

The conditions complained of as being violative of the requirements and subversive of the purposes of the Pacific Railroad Acts have been in existence for over thirty years. It may be truly said that the lines have never been used or operated under any other conditions. It is passing strange that their unlawful character was not suspected until, in the search for weapons with which to disrupt the Southern Pacific System, the hitherto unnoticed scope and effect of sections 12 and 15 were discovered. The relations and mutual obligations of the Central Pacific and Union Pacific under the Pacific Railroad Acts have been the subject of repeated investigation by successive committees of Congress. The resulting reports have discussed and commented upon the operation of the Central Pacific and the other Southern Pacific lines as part of one system. They have called attention to the forwarding over the "Sunset route" of traffic which might otherwise have moved

over the Central Pacific-Union Pacific line; but it has never been charged that this was a discrimination within the prohibition of the Pacific Railroad Acts. At the time of these investigations the United States was a creditor of both the Central Pacific and Union Pacific, dependent upon their revenues for payment of its debt, with a right to receive directly a certain percentage thereof. The Government then had a direct interest, other and stronger than any interest it now has, in discovering and enjoining any unlawful diversion of traffic. While the potentialities of the union under one management of the Central Pacific and "Sunset route" were commented on, it was never urged that anything in the Pacific Railroad Acts gave the United States, although a creditor, any right to separate the Central Pacific from the Southern Pacific System, and it was never even intimated that sections 12 or 15 of the act of 1864 or the act of 1874 were being violated.

We refer particularly to the report of the Pacific Railway Commission of 1887, the most extensive and thorough of the reports, which furnished the material that was largely drawn upon by subsequent reports. Senate Executive Documents, 1st Session, 50th Congress, 1887-8, Vol. II, pp. 1 ffg. At the time of this Commission's investigation the proportional movement of transcontinental traffic via the "Sunset route" was very much larger than at present or at any date in the near past. In commenting upon this, it was said (p. 115):

> "In the judgment of the Commission the controlling motive, which has lead to this alteration in the transit of freight, has been the question of convenience and public advantage. It has not arisen from an intention to reduce the net earnings applicable to the percentage due to the United States. In the report of the Postmaster-General it is stated that this same diversion is practised by his department, and that he selects the best and the quickest routes because he thereby promotes public convenience."

The rights and interests of the United States as a creditor of the Central Pacific and of the Union Pacific are one thing, and the obligations *inter sese* of those railroads as to the operation and use of their lines under sections 12 and 15, as amended, are another and quite a different thing. The Pacific Railway Commission was required by the act which created it (act of March 3, 1887, 24 Stat., 488) to investigate and report as to whether the aided railroads had observed all the obligations imposed upon them by the Pacific Railroad Acts. If, in the opinion of the Commission, the forwarding of such a large amount of traffic as was then moving over the "Sunset route" constituted a forbidden discrimination it would have so reported. But it did not do so. It reported the fact, commented on the possibilities of prejudice therefrom to the interests of the United States as creditor, but did not even on that score find anything therein contrary to the statute. It even justified the forwarding of traffic by the "Sunset route", as is shown by the quotation *supra* and by the observa-

tion contained in the following paragraph of the report (p. 115):

> "It appears to us that this question of the diversion of traffic must be regulated by the interest and demands of the people who use the railroads. Trade will always find the easiest and most natural channel."

The only violation of the provisions in respect to discrimination found by the Commission was that practised by the Union Pacific against the Kansas Pacific in refusing "to prorate through business, east or west" (pp. 109-114).

The failure of any Congressional Committee, in investigations and reports made from time to time during a long period of years, to find anything violative of sections 12 or 15, as amended, in the relations between the Central Pacific and the Southern Pacific Company or in the influence which such relations had or might have upon the movement of traffic, justifies the statement that Congress never construed the requirements of the Pacific Railroad Acts as does the Attorney General in the present suit. And the same may be said of the Executive Department of the Government. We may add that the Department of Justice was likewise in darkness as to the scope and effect of the provisions in question until the exigencies of the instant case cast a new light upon the statutes. It was to the interest of the Government in the Union Pacific Unmerger suit to have the fullest effect given to the

requirements of section 12 and of section 15, as amended. If the United States then believed that the mere union of the Central Pacific line to Ogden and of the "Sunset route" in one system was forbidden by the Pacific Railroad Acts, it would and should have said so. For it could thus not only have completely removed the Union Pacific's justification for the merger, but have put a stop to such violation of the law. But the contention of the Government was that the Pacific Railroad Acts would prevent the Southern Pacific Company or the Central Pacific from closing the Ogden gateway by refusing to make through routes and joint rates with the Union Pacific, *and that the Union Pacific had no reason to complain of its treatment by the Central Pacific or the Southern Pacific Company in respect to the Ogden route, and, hence, could not justify the merger attacked on the ground of self-preservation.*

This suggests a consideration of the decision in the Union Pacific Unmerger suit.

V. The pleadings, argument and decision of the Court in the Union Pacific Unmerger Suit considered with reference to their bearing on the Pacific Railroad acts.

The members of this Court who participated in the decision of the unmerger suit do not need to be informed that that case was not prosecuted or defended on the theory that the Southern Pacific Company, as owner of the Central Pacific and of the "Sunset route", had been guilty of discrimination or any other objectionable conduct in its treatment of the Union Pacific. The Pacific Railroad Acts figured in the case only in connection with the question whether it was necessary for the Union Pacific to acquire the Central Pacific in order to insure a continuance of the fair treatment it had always received. However, when in the course of the direct-examination of Mr. Connor in this case, counsel for the Government expressed *his* opinion that preferential solicitation of some transcontinental traffic for the "Sunset route" constituted "systematic and preconcerted discrimination" against the Union Pacific, we were warned that the opinion in the unmerger case would be relied upon to support the Government's contentions on this branch of the case. As the Government in the former suit characterized the conduct of the Southern Pacific Company as fair treatment of the Central Pacific-Union Pacific line, as the Union Pacific was not aware that it was, and had been since 1883, the victim of an unlawful discrimination, this Court

did not have before it any argument in favor of or against the construction of the Pacific Railroad Acts which the Government now urges upon this Court. We shall endeavor to show that it did not intentionally, or even casually and unwittingly, decide in favor of the Government the questions presented in this case under the Pacific Railroad Acts.

It is well to bear in mind throughout this case that the Union Pacific dominated the defense of the unmerger suit. Hence, when the Government took and maintained the position that the Southern Pacific ownership of the Central Pacific had not prevented competition between the Ogden route and the "Sunset route" and was not inconsistent with observance of the requirements of the Pacific Railroad Acts, the Union Pacific, in fighting to preserve the union of the two systems, naturally emphasized the importance to it of the Central Pacific and ignored the greater importance of that property to the Southern Pacific system. The result was that the rights and interests of the Southern Pacific, when separated from the Union Pacific, received no consideration. The Court's attention was not called to the genesis of the Southern Pacific system, to the essential part played by the Central Pacific lines in that system, to the impairment in the service which would result from a separation, etc. There was nothing in the record in the former suit to prevent this Court from being left with the impression that it might give general satisfaction to turn over the Central Pacific to the Union Pacific. But we submit that there is

certainly enough in the present record to completely obliterate such an impression. Even if the question whether the Southern Pacific or the Union Pacific should have the Central Pacific depended upon which needed the property more or upon how the public interests would be served under one ownership or the other, the decision would be for the Southern Pacific. But a person canot be deprived of his property because it would be more useful to another. Whether the Southern Pacific Company shall be deprived of the Central Pacific depends, so far as the Pacific Railroad Acts are concerned, upon whether such ownership is prohibited by those acts.

The petition of the United States in the Unmerger Suit contains in the recitals or narrative part a reference to the acts of 1862 and 1864 and a quotation from section 15 of the latter act; but the acts are not afterwards mentioned in the petition. The defendants simply referred to the Pacific Railroad Acts for their answer to the allegations of the petition in respect thereto. There is therefore nothing in the pleadings to indicate what claims either side intended to base upon these acts of Congress.

The majority opinion rendered by the Circuit Court refers to the contention that the Pacific Railroad Acts obligated the Union Pacific and Central Pacific to the establishment of through routes and maintenance of joint rates, and took these roads out of the operation of the rule announced in the case of *Southern Pacific Company* v. *Interstate Commerce Commission* (200 U. S.

536), and declares that the Court does not so interpret them.

> "These acts," says the Court, "were obviously intended to secure a permanent physical connection between the roads and to provide generally for equal accommodation to the public on the basis of independent carriers; but we discover in them no provisions or machinery by which the Southern Pacific, as successor to one of them, could have been compelled by the courts or otherwise to make agreements governing interchange of traffic or through rates, or fixing the division of the through rates between the two roads. Section 15 of the act of 1864 is not substantially different, so far as the matter under consideration is concerned, from section 3 of the Interstate Commerce Act of 1887 (24 Stat., 380). They both forbid discrimination in rates between connecting lines. Section 3 has been held by the Interstate Commerce Commission and by the Court of Appeals of this Circuit not to invest the Commission or the courts with power to compel carriers to make contracts or agreements for through billing of freight or for joint rates" (p. 113).

The dissenting opinion does not refer to the Pacific Railroad Acts.

The contention made by the Government in its brief filed in the Circuit Court was that the Act of 1884 "insured the Union Pacific a connection with California without discrimination of any kind in favor of any road. Therefore, it was unnecessary for the Union Pacific to buy the Southern Pacific Company in order to have

its cars and freight transported on a 'continuous line.'" (See Brief on the Law, p. 14.) Accordingly, in its Brief on the Facts, the Government declared:

> "Under the laws of Congress, as we will show in our brief of the law, the Union Pacific and the Central Pacific lines were required to be operated as a continuous line without discrimination; but irrespective of the law, the Southern Pacific, as a matter of self-preservation, was always compelled to and did gladly interchange business with the Union Pacific, accepting for its share of the through haul the division of the through rate accorded to it by consent, from 1870 down to the present time, as testified to by Mr. Stubbs" (Brief of Facts, p. 268).

This Court had before it the contention made by the Union Pacific, that the control of the Central Pacific's line between San Francisco and Ogden gave to the Southern Pacific the power to close the Ogden gateway to the Union Pacific by refusing to make arrangements for through routing, joint rates, etc., or by discriminations in respect to such arrangements against the Union Pacific. In combating this contention, and the argument based on it, that the acquisition of the Central Pacific was justifiable on the plea of self-protection, the Court said:

> "Nor do we think it can be justly said that because of the connection with the Rio Grande road at Ogden the Southern Pacific was in position to discriminate at will against the Union Pacific in such wise as to greatly impair the latter road's

carrying trade upon eastbound freight. In this connection it is said that since the consolidation, notwithstanding the former published rates are maintained, the favoring attitude of the Southern Pacific to the Union Pacific practically destroyed the carrying trade from Ogden to the East for the Rio Grande System and necessitated the construction by the latter road of a new connection for California points, and that such would have been the fate of the Union Pacific upon disagreement as to rates with the Southern Pacific. In reference to this point we think it is pertinent to consider the acts of Congress known as the Pacific Railroad Acts. These acts required the two roads, the Central Pacific and Union Pacific, to be 'operated and used for all purposes of communication, travel and transportation, so far as the public and government are concerned, as one connected, continuous line' (12 Stat., 489, 495, act of July 1, 1862, c. 120, Sec. 12), and in such operation and use 'to afford and secure to each equal advantages and facilities as to rates, time and transportation, without any discrimination of any kind in favor of the road or business of any or either of said companies, or adverse to the road or business of any or either of the others. * * *' (13 Stat. 356, 362, act of July 2, 1864, c. 216, Sec. 15.) They also authorized the consolidation of the roads. These acts, it is said, are only intended to secure the permanent physical connection of the roads and to provide for equal accommodations upon the basis of independent carriage, and outline no method by which the two roads can be compelled to make a joint through rate, and that at the time of the stock transfer there

was no such provision in the Interstate Commerce Acts. Therefore, it is said that the Union Pacific, no less than the Rio Grande, would have been practically at the mercy of the Southern Pacific in the favorable or unfavorable treatment which might have been accorded to it in the matter of through business to be transported eastwardly. The purpose of Congress to secure one permanent road to the coast so far as physical continuity is concerned is apparent, but we do not think the acts stop with that requirement. It is provided that facilities as to rates, time and transportation shall be without any discrimination of any kind in favor of either of said companies or adverse to the road or business of any or either of the others, and the purpose of Congress to secure a continuous line of road, operating from the Missouri River to the Pacific Coast as one road, is further emphasized in the act of Congress of June 20, 1874, c. 331, 18 Stat., 111, making it an offence for any officer or agent of the companies authorized to construct the roads or engaged in the operation thereof, to refuse to operate and use the same for all purposes of communication, travel and transportation, so far as the public and Government are concerned, as one continuous line, and making it a misdemeanor to refuse, in such operation and use, to afford and secure to each of said roads equal advantages and facilities as to rates, time and transportation, without any discrimination of any kind in favor of or adverse to any or either of said companies. Such practices of systematic and preconcerted discrimination as are said to have destroyed the Rio Grande's carrying trade as a connection for the

East for business at Ogden would have violated the statute as discriminations adverse to the Union Pacific and be equally violative of the letter and spirit of the acts of Congress. Certainly such discriminations could be restrained by the courts (*Union Pacific Railway Co.* v. *Chicago, Rock Island & Pacific Railway Co.,* 163 U. S., 564, 603, 604), and might possibly have resulted in a forfeiture of all rights under the acts of Congress. The obligation to keep faith with the Government continued, as did the legislative power of Congress concerning these roads, notwithstanding changed forms of ownership and organization. *Union Pacific Railroad Company* v. *Mason City, &c., Railroad Co.,* 199 U. S., 160."

The questions decided by the Supreme Court were (1) That it cannot justly be said that "because of the connection with the Rio Grande road at Ogden the Southern Pacific was in a position to discriminate at will against the Union Pacific in such wise as to greatly impair the latter's carrying trade upon eastbound freight". (2) That the Pacific Railroad Acts require not only permanent physical connection between the roads which they authorized to be constructed by the several railroads named therein, but also required that "facilities as to rates, time and transportation shall be without discrimination of any kind in favor of either of said companies or adverse to the road or business of any or either of the others". And the conclusion was that "Such practices of systematic and preconcerted discrimination as are said to have

destroyed the Rio Grande's carrying trade as a connection for the East for business at Ogden would have violated the statute as discriminations adverse to the Union Pacific and be equally violative of the letter and spirit of the acts of Congress".

These questions were decided solely with reference to the point made in argument, that acquisition of Central Pacific line was the only way by which the Union Pacific could be assured of adequate arrangements for the operation of the line between Ogden and San Francisco, in connection with its line to Omaha, as a continuous line for through transportation under through rates, etc. There is no warrant for the claim that such preferential solicitation for the Sunset Gulf route as this record discloses is of the same character as "such practices of systematic and preconcerted discrimination" as the record in the Unmerger Suit disclosed to have been practiced against the Denver & Rio Grande with the effect of destroying that road's business through Ogden, and, hence, that this Court has already decided that such preferential solicitation is a violation of the Pacific Railroad Acts. We do not know, and this Court cannot know in deciding this case, what the record in the former suit disclosed as to the facts in reference to the treatment of the Denver & Rio Grande. We have as a part of this record the Brief of the Government on the Facts, filed in the former suit. We doubt if that brief can be referred to except as to the plea of estoppel, and then only to show the position of the Government upon the question of competition between the Ogden

and the Sunset-Gulf route. But in the remote contingency that it becomes necessary to try to ascertain what were the traffic relations between the Southern Pacific and Denver & Rio Grande during the merger, referred to in the above quoted paragraph, the Court will find on pages 372 and following, of the Government's brief, enough to convince it that the discriminating practices against the Denver & Rio Grande went far beyond routing unrouted traffic preferentially over the Union Pacific, and extended to refusal to agree to divisions of through rates, discrimination in rates, refusal to allow equipment of Southern Pacific to be loaded for freight consigned via the Denver & Rio Grande.

It remains to consider whether the decision in the former suit covers the questions presented in the instant case. These questions are:

(1) Has the Central Pacific, or the Southern Pacific as owner of the Central Pacific, failed or refused to accord to the Union Pacific the equal non-discriminatory facilities and advantages required by the Pacific Railroad Acts?

This question was certainly not decided in the affirmative by this Court in the former case. On the contrary, it was not denied by either party, and was assumed by the Court, that the past conduct of the Central Pacific had given the Union Pacific no cause for complaint. The Government referred in its Brief of Facts to "the fair treatment always extended to the Union Pacific by the Central Pacific line" (p. 303). The Court simply

decided that this fair treatment was not a mere concession or favor on the part of the Southern Pacific, but was required by the Pacific Railroad Acts, and that its continuance was secured and could be enforced under those acts.

(2) Are the requirements of the Pacific Railroad Acts violated if either the Central Pacific or the Union Pacific forwards over some other line traffic, the routing of which it controls, which could move over the through line formed by them, or is it a violation of the acts for either of those companies to have connections or affiliations which would make it to the interest of either to forward any traffic, the routing of which it controls, over such connections or affiliated line, when such traffic could otherwise move over the line formed by the two companies?

This Court certainly did not decide either of these questions in the affirmative. On the contrary, the affirmative answer to these questions, which the Government now contends for, is inconsistent with the pleadings and argument of the Government and of the decision of the Court.

The connection between the Southern Pacific Company and the Central Pacific Railway Company existed, to the knowledge of the Government, at the time of the Unmerger Suit and for many years prior thereto. The connection and affiliation between the Central Pacific line and the "Sunset route" have always existed, and the routing over the "Sunset route" of some traf-

fic which might move over the Ogden route has always been practiced, except possibly during the period when the Union Pacific controled both lines. The object of the Unmerger Suit being to relieve the Central Pacific-Union Pacific transcontinental line from all unlawful restraints, it would have been appropriate for the Government, if the control of the Southern Pacific Company over the Central Pacific and the "Sunset route" or the practices of the Southern Pacific Company in respect to solicitation or routing of traffic, amounted to an unlawful discrimination against the Ogden route, to have so charged in its petition and asked for a decree terminating such unlawful conditions or practices. That it did not do so clearly indicates that it did not believe that the existence of such control or the manner of its exercise were unlawful. There can be no doubt that after all the evidence was in, the Government believed that the Union Pacific's rights under the Pacific Railroad Acts had not been violated by the Southern Pacific or the Central Pacific.

The Court would not have referred to the use which the Union Pacific might have made of its line to San Francisco via Portland or sanctioned the arrangement by which the Union Pacific obtained control of the San Pedro, Los Angeles and Salt Lake Railroad Company (the Portland and the San Pedro lines being competitors, on either side, of the Central Pacific) if that Court had construed the Pacific Railroad Acts as forbidding the Central Pacific, and hence the Union

Pacific, from forwarding or having an interest in forwarding over some other line traffic which might move through the Ogden gateway over the line of the other. Would it be consistent with the reasoning or conclusion of the Court in the former case to assert that the Union Pacific may not lawfully forward by its Portland line or its San Pedro line any traffic which might otherwise move over the Central Pacific line?

The Court referred in its opinion to the statement in the lease of the Central Pacific to the Southern Pacific in 1885, that the acquisition by the Union Pacific of a line to the coast through the Oregon Short Line gave it an interest adverse to the Central Pacific. Its subsequent control of a second route to the coast through the San Pedro line has doubled this adverse interest. Can it be possible that the Pacific Railroad Acts created a one-sided partnership, requiring the Central Pacific to work exclusively for the Union Pacific, without liberty to solicit the forwarding of freight by other connections, while the Union Pacific is permitted to prefer its affiliated lines to the north and south of the Central Pacific? What public interest will be subserved by thus neutralizing any competition between the Central Pacific line and the two lines on either side of it?

There is a fundamental inconsistency between the attitude of the Government in the two cases, the present case and the one against the Union Pacific, both in respect to the effect of the operation of the Central Pacific by the Southern Pacific and as to the legality

under the Pacific Railroad Acts of the conditions resulting from the union under one management of the Central Pacific and the Southern Pacific route. In the former suit it was urged that the Union Pacific had alwas been treated fairly and had nothing to complain of under the operation of the Central Pacific by the Southern Pacific, and that the Pacific Railroad Acts insured a continuance of such treatment. In the present suit it is urged that the Union Pacific is being discriminated against under the operation of the Central Pacific by the Southern Pacific within the prohibition of the Pacific Railroad Acts. In one case the Pacific Railroad Acts are invoked as securing a continuance of conditions, which are approved of and characterized as constituting fair treatment of the Union Pacific. In the other case the Pacific Railroad Acts are invoked as prohibiting the same conditions, which are declared to constitute discrimination against the Union Pacific.

There has been no change in conditions since the unmerger suit which can account for the change in the attitude of the Government in respect to the requirements of the Pacific Railroad Acts or their observance by the Southern Pacific Company. There has been no change in the arrangements for the operation of the through line or for the rates, fares, facilities, etc., in connection therewith. They have continued to be mutually satisfactory and apparently leave nothing to be desired. The Union Pacific was never less at the mercy of the Southern Pacific in the matter of through

traffic via Ogden than at the present time. When it sought to justify its merger with the Southern Pacific on the ground that it had no assurance that their satisfactory relations as connecting lines would continue, the Central Pacific line was its only outlet to San Francisco, the initial railroad absolutely controlled the routing of through traffic and the Interstate Commerce Commission had no power to establish through routes or to fix joint rates and the divisions thereof. The Western Pacific has since been constructed and affords another direct line to San Francisco. Shippers' routing directions are now controlling. The Interstate Commerce Commission has now, under the Transportation Act, 1920, such complete jurisdiction and powers over the whole subject of connecting lines, through routes, joint rates and reasonable divisions thereof, proper facilities, undiscriminating treatment, etc., as to insure to the Union Pacific from the Southern Pacific as owner of the Central Pacific all that the public interest demands and more than was contemplated when Congress formulated Section 12 of the Act of 1862 or Section 15 of the Act of 1864. During the long period of years when the Central Pacific line was the Union Pacific's sole direct connection with the coast, when shippers had no right to prescribe the routing of through traffic, when the Interstate Commerce Commission had no power to establish or regulate through routes and service, neither the Union Pacific nor the public nor the Government found any conflict between the inclusion of the

Central Pacific lines in the Southern Pacific System and the due observance by the Southern Pacific of the requirements of the Pacific Railroad Acts. It is hard to understand why at this time, when the continued observance of such requirements are insured by new legislation and changed conditions, the Government should demand further assurance in the form of the dismemberment of the Southern Pacific System. It is equally difficult to find in the provisions of the Pacific Railroad Acts any legal support for such a demand.

In Conclusion.

This supplemental brief can now speak for itself, and it is, therefore, unnecessary to repeat that it does not cover the whole case for the defense. The questions not discussed have been omitted, not from want of faith in defendants' contentions in respect thereto, but because they are fully presented in the main brief, and because it did not fall within the proposed compass of this supplemental argument to deal with matters of defense, the presentation of which involved citation and discussion of authorities. It is believed that a decision in favor of defendants will follow from the application of well-settled principles of law to facts, undisputed or established beyond dispute.

To make out its case under the Federal Anti-trust Act the Government must convince the Court that the Southern Pacific System is a prohibited combination which for more than thirty years has been continuously guilty of an undue and unreasonable restraint of trade, although its origin involved no destruction of existing competition, its development was by normal and natural growth, without absorption or elimination of competitors, and its present status has no element therein of monopolization or trade control; and this upon a record which not only fails to show that any increased competition, improved service or other public benefit will follow the disruption of the system, but contains very strong evidence to the contrary; upon a record, moreover, showing absence of any complaint by any com-

petitor of unfair treatment or by any patron of unsatisfactory service or charges, and opposition of the communities served by the system to its dissolution.

To make out its case under the Pacific Railroad Acts the Government must establish the contention that certain conditions are inconsistent with or destructive of the purposes of the Acts, when thirty years of experience has demonstrated the contrary. It must be able to persuade the Court to accept a construction that escaped the frequent scrutiny to which the statutes have been subjected from time to time by different departments of the Government and remained unsuspected for over thirty years, until suggested by the exigencies of this case, a construction which involves an addition to the plainly expressed requirements of the Acts, not necessary to make the expressed requirements effective and not justified by the context, a construction moreover which, if accepted by this Court, will convict of ignorance or disregard of the law successive committees of Congress who undertook from time to time to investigate the matter of compliance with the statutes in question, the President of the United States and the Cabinet members who in 1899 arranged the settlement of the indebtedness of the Central Pacific Railroad Company, and the Department of Justice, which failed to bring the acts now complained of to the attention of the Court on the opportune occasion of the suit to unmerge the Union Pacific and the Southern Pacific.

As might naturally be expected of a litigation from fourteen to thirty years behind time, this suit is out of date, uncalled for, anachronistic; and, fortunately for the public as well as defendants, the Government has failed to show that it is entitled to the relief prayed for.

Respectfully submitted,

JOSEPH PAXTON BLAIR,
Of Counsel.

WILLIAM F. HERRIN,
GARRET W. MCENERNEY,
JOSEPH PAXTON BLAIR,
Counsel for Appellees.

"ORDER.

"At a General Session of the INTERSTATE COMMERCE COMMISSION, held at its office in Washington, D. C., on the 12th day of May, A. D., 1917.

SOUTHERN PACIFIC COMPANY'S OWNERSHIP OF ATLANTIC STEAMSHIP LINES.

No. 6606.

APPLICATION OF SOUTHERN PACIFIC COMPANY UNDER THE PROVISIONS OF SECTION 5 OF THE ACT TO REGULATE COMMERCE AS AMENDED BY THE PANAMA CANAL ACT IN CONNECTION WITH ITS OWNERSHIP OF THE ATLANTIC STEAMSHIP LINES.

It appearing, That on February 18, 1914, the Southern Pacific Company filed an application under section 5 of the act to regulate commerce, as amended by section 11 of the Panama Canal act, seeking authority to continue the ownership and operation beyond July 1, 1914, of the Southern Pacific Company-Atlantic Steamship Lines; and a full investigation of the matters and things involved having been had, and the Commission, on January 24, 1917, having made and filed a report containing its findings of fact, which said report is hereby referred to and made a part hereof, which said report contained findings that the petitioner's rail lines may and do compete with its Atlantic Steamship Lines operating between New York and New Orleans and between New York and Galveston, that under present conditions an extension of the time during which the petitioner may continue to operate or have an interest in these steamship lines will neither exclude, prevent nor reduce competition on the routes by water, and that the correction of certain objectionable practices which were enumerated would leave no

basis of record to justify the withholding of the requisite finding, under the act, that the existing service of these steamship lines between New York and New Orleans and between New York and Galveston is in the interest of the public and of advantage to the convenience and commerce of the people;

And it further appearing, That the petitioner by the filing of appropriate tariffs now effective from New York, N. Y., and points in Atlantic seaboard territory to Galveston and interior Texas points has corrected the objectionable practices above referred to:

It is ordered, That the application of the Southern Pacific Company for an extension of time beyond July 1, 1914, within which it may continue the operation of its Atlantic Steamship Lines between New York and New Orleans and between New York and Galveston be, and it is hereby, granted, subject to such further order or orders as may hereafter be entered by the Commission.

It is further ordered, That all rates, fares, schedules and regulations aplying to the transportation of persons and property by the petitioner's Atlantic Steamship Lines between New York, N. Y., and New Orleans, La., and between New York, N. Y., and Galveston, Tex., subject to the act, be filed with this Commission and posted as required by the act to regulate commerce and regulations of the Commission on or before July 1, 1917.

By the Commission:

(SEAL) GEORGE B. MCGINTY,
Secretary."